MICHAEL WALTON
P.O. Box 751
San Anselmo, CA 94979
(415) 456-7920
In Propria Persona

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation, Plaintiff, vs. GERALD ARMSTRONG; MICHAEL WALTON; THE GERALD ARMSTRONG CORPORATION, a California for profit corporation; DOES 1 through 100, inclusive, Defendants.	CASE NO. 157 680 EVIDENCE IN SUPPORT OF OPPOSITION OF MICHAEL WALTON TO PLAINTIFF'S MOTION FOR LEAVE TO COMPLETE DISCOVERY; REQUEST FOR SANCTIONS AGAINST MICHAEL AND SOLINA WALTON Date: December 16, 1994 Time: 9:00 A.M. Location: Dept. 1 Judge Gary W. Thomas Trial Date: May 18, 1995

VOLUME TWO

INDEX TO EXHIBITS

VOLUME ONE

Declaration of Michael Walton

Exhibit A: Letter from Ms. Laurie Bartilson to Michael Walton dated November 17, 1994.

Exhibit B: Letter from Michael Walton to Laurie Bartilson dated November 21, 1994.

Exhibit C: Letter from Laurie Bartilson to Michael Walton dated November 22, 1994.

Exhibit D: Letter from Michael Walton to Laurie Bartilson dated November 29, 1994.

VOLUME TWO

Exhibit E: Michael Walton's Response to Plaintiff's Demand for Inspection of Real Property.

Exhibit F: Solina Walton's Response to Plaintiff's Demand for Inspection of Real Property and Objection to Deposition of Solina Walton.

Exhibit G: Declaration of Gerald Armstrong dated November 16, 1994.

Exhibit H: "Litigation Noir" an article from the December 1994 issue of California Lawyer magazine.

Exhibit I: "Scientologists Report Assets of $400 Million", an article dated October 22, 1993 which appeared in The New York Times newspaper.

Exhibit E

MICHAEL WALTON
P.O. Box 751
San Anselmo, CA 94979
(415) 456-7920
In Propria Persona

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation, Plaintiff, vs. GERALD ARMSTRONG; MICHAEL WALTON; THE GERALD ARMSTRONG CORPORATION, a California for profit corporation; DOES 1 through 100, inclusive, Defendants.	CASE NO. 157 680 MICHAEL WALTON'S RESPONSE TO PLAINTIFF'S DEMAND FOR INSPECTION OF REAL PROPERTY Date: Time: Location: Trial Date: May 18, 1995

DEMANDING PARTY: Church of Scientology International, plaintiff.

RESPONDING PARTY: Michael Walton, defendant.

THIS RESPONSE is by MICHAEL WALTON to the PLAINTIFF'S DEMAND FOR INSPECTION OF REAL PROPERTY.

RESPONSE TO DEMAND

I object to this demand on the grounds that it violates my constitutional right of privacy; it is irrelevant, burdensome and oppressive, harassive and not calculated to lead to the discovery of admissible evidence. The attempted discovery also violates the

"30 day rule" and is, therefore, discovery prohibited by C.C.P Section 2024(a).

Dated: October 15, 1994

Michael Walton

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA, COUNTY OF MARIN

I am a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is 700 Larkspur Landing Circle, Suite 120, Larkspur, California 94939.

On October 17, 1994, I served the within MICHAEL WALTON'S RESPONSE TO PLAINTIFF'S DEMAND FOR INSPECTION OF REAL PROPERTY on the interested parties by placing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States mail at Larkspur, California addressed as follows:

Laurie J. Bartilson
Bowles & Moxon
62 55 Sunset Blvd., Suite 2000
Los Angeles, CA 90028

Andrew Wilson
Wilson, Ryan & Campilongo
235 Montgomery Street, Suite 450
San Francisco, CA 94104

Ford Greene, Esq.
711 Sir Francis Drake
San Anselmo, CA 94960

Executed on October 17, 1994 at Larkspur, California.

I declare under penalty of perjury that the foregoing is true and correct.

Stacey Ratto

Exhibit F

SOLINA WALTON
P.O. Box 751
San Anselmo, CA 94979
(415) 456-7920
In Propria Persona

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation, Plaintiff, vs. GERALD ARMSTRONG; MICHAEL WALTON; THE GERALD ARMSTRONG CORPORATION, a California for profit corporation; DOES 1 through 100, inclusive, Defendants.	CASE NO. 157 680 SOLINA WALTON'S RESPONSE TO PLAINTIFF'S DEMAND FOR INSPECTION OF REAL PROPERTY AND OBJECTION TO DEPOSITION OF SOLINA WALTON Date: Time: Location: Trial Date: May 18, 1995

DEMANDING PARTY: Church of Scientology International, plaintiff.

RESPONDING PARTY: Solina Walton.

SET: 1

THIS RESPONSE is by SOLINA WALTON to the PLAINTIFF'S DEMAND FOR INSPECTION OF REAL PROPERTY.

RESPONSE TO DEMAND

I object to this demand on the grounds that it violates my constitutional right of privacy; it is irrelevant, burdensome and oppressive, harassive and not calculated to lead to the discovery of admissible evidence. The attempted discovery also violates the

"30 day rule" and is, therefore, discovery prohibited by C.C.P Section 2024(a).

PARTY NOTICING DEPOSITION OF SOLINA WALTON: Church of Scientology International, plaintiff

RESPONDING PARTY: Solina Walton

OBJECTION TO NOTICE OF DEPOSITION

I object to this Notice of Deposition of Solina Walton on the grounds that discovery in this action has terminated pursuant to the "30 day rule" and is, therefore, discovery prohibited, inter alia, by C.C.P Section 2024(a).

Dated: October 15, 1994

Solina Walton

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA, COUNTY OF MARIN

I am a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is 700 Larkspur Landing Circle, Suite 120, Larkspur, California 94939.

On October 17, 1994, I served the within SOLINA WALTON'S RESPONSE TO PLAINTIFF'S DEMAND FOR INSPECTION OF REAL PROPERTY AND OBJECTION TO DEPOSITION OF SOLINA WALTON on the interested parties by placing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States mail at Larkspur, California addressed as follows:

Laurie J. Bartilson
Bowles & Moxon
6255 Sunset Blvd., Suite 2000
Los Angeles, CA 90028

Ford Greene, Esq.
711 Sir Francis Drake
San Anselmo, CA 94960

Executed on October 17, 1994 at Larkspur, California.

I declare under penalty of perjury that the foregoing is true and correct.

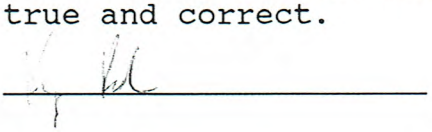


Exhibit G

DECLARATION OF GERALD ARMSTRONG

I, Gerald Armstrong, declare:

1. I am the defendant in the cases of Scientology v. Gerald Armstrong, Marin Superior Court No. 157680 (Armstrong IV) and Los Angeles Superior Court Nos. C 420153 (Armstrong I) and BC 052395 (Armstrong II). Scientology v. Armstrong, LASC No. BC 084642 (Armstrong III) was consolidated with Armstrong II and given the same case number, BC 052395. I am also the sole assistant of Ford Greene, my attorney in the Armstrong II and Armstrong IV cases.

2. On October 31, 1994 I took a telephone call from Judy in the Marin County Clerk's office who advised me that the Scientology organization's paralegal had completed his review of the Armstrong II court file, which had been transferred from Los Angeles to the Marin Superior Court, that the Scientology paralegal had determined there were documents missing from the file, and that it was now the turn of someone from Mr. Greene's office to review the file to ensure that Scientology's record of the file's incompleteness was complete.

3. Despite our best intentions, due to some other matters in Mr. Greene's office of considerable more urgency and importance than reviewing the transferred file, the first opportunity I had to review the file was Thursday, November 3. When I arrived at the Clerk's office, however, I was advised by Arlene that Judy, who had been given responsibility for the file, was out that day and my review would have to wait until she

returned the next day. I spent almost all of Friday, November 4 reviewing the file and returned Monday, November 7 and completed the review. The same day Mr. Greene faxed Scientology attorney Laurie Bartilson a letter based on my review, listing various documents and other items I had determined were missing from the file.

4. Now on November 16 Ms. Bartilson urges the Court to order the file deemed complete and accepted by the clerk and to order $400.00 sanctions against me and Mr. Greene. As I understand the word "complete," and believing that the Court's definition of the word must be no less complete than mine, the file is not complete. No sanctions should be ordered, other than appropriate sanctions against Ms. Bartilson's organization and its lawyer.

5. Scientology states that its purpose in seeking the Court's orders to deem the file complete and sanctions is "to end the delaying tactics of defendant Armstrong and his counsel in connection with the routine transfer of the file of this action from Los Angeles to Marin County." (Scientology's Memorandum of Points and Authorities at 2:1-5) Scientology's actual purpose is to take advantage of a concocted opportunity to "dev-T" and threaten me and Mr. Greene, and to get in front of the Court one more time whatever it can find or manufacture to show that I am the bad guy Ms. Bartilson and her organization are trying by all their antisocial means to get the world to think I am.

6. "Dev-T" is a Scientology term shortened from "developed

traffic" which means "unusual and unnecessary traffic" or, as a verb, to generate such unusual and unnecessary traffic; or to cause someone to do unnecessary work. It also means confusion or to generate confusion. "Dev-T's" usage in organization policies and orders is spelled out in its "Dictionary of Administration and Management," relevant pages from which are attached hereto as Exhibit A.

7. Scientology's use of dev-T as a litigation tactic is spelled out in an internal Scientology document, Guardian Order 166, dated October 7, 1971, a copy of which is attached hereto as Exhibit B. The document, which was one of many such documents I studied inside the organization, was written by the organization's former "Guardian," Jane Kember, at the time junior in the organization only to L. Ron and Mary Sue Hubbard. Kember explains to Guardian's Office personnel in all organizations internationally that Scientology's legal strategy in the U.S. is to use litigation as a financial club:

> "The button used in effecting settlement is purely financial. In other words, it is more costly to continue the legal action than to settle in some fashion. ...[¶] Therefore, it is imperative that legal US Dev-T his opponents and their lawyers with correspondence (a lawyer's letter costs approx $50), phone calls (time costs), interrogatories, depositions and whatever else legal can mock up. [¶] One of the bright spots of US legal is that even if you lose you

don't pay your opponent for his lawyers fees." (Ex. B. p. 3)

8. L. Ron Hubbard spelled out what the organization's legal personnel are to do in his policy letter entitled "Legal, Tax, Accountant and Solicitor, Mail and Legal Officer," dated February 3, 1966, a copy of which is attached hereto as Exhibit C:

> "The purpose of the Legal Officer is to help LRH handle every legal, government, suit, accounting and tax contact or action for the organization and by himself or employed representative, to protect the organization and its people from harm and to bring the greatest possible confusion and loss to its enemies." (Ex. C)

9. Hubbard spelled out the way he expected his organization to use the law in a 1955 article entitled "The Scientologist," relevant pages from which are attached hereto as Exhibit D. This article was reprinted by the organization in its "scriptures" at least into the 1980's.

> "The purpose of the suit is to harass and discourage rather than to win. [¶] The law can be used very easily to harass, and enough harassment on somebody who is simply in the thin edge anyway, well knowing that he is not authorized, will generally be sufficient to cause his professional decease. If possible, of course, ruin him utterly." (Ex. D p. 157)

Scientology's present supreme ruler, David Miscavige, has,

without fanfare, removed this mad mandate from the organization's latest reprinting of its "scriptures;" but he, as his former boss did a generation ago with his idiom "fair game," has removed neither the policy nor the practice from what he enforces and uses as Scientology. Scientology's Armstrong I-IV litigation is its dramatization into present time of Hubbard's "use the law to harass - ruin him utterly" decree.

10. Exhibits B through D deal with the litigation aspect of Hubbard's basic philosophy and practice in dealing with his and his organization's labeled enemies, a terrifying doctrine he called "fair game." Attached hereto as Exhibit E is his Policy Letter entitled "Penalties for Lower Conditions" dated October 18, 1967, wherein he states as organization policy:

> "ENEMY - SP Order. Fair Game. May be deprived of property or injured by any means by any Scientologist without discipline of the Scientologist. May be tricked, sued or lied to or destroyed." (Ex. E)

11. Scientology and its lawyers pretend to be oblivious to the immorality of their litigation practices and their reputation in the legal industry, even among judges in all sorts of courts, for the same. Actually Scientology and its lawyers are fully aware of the immorality of their practices and their reputation for Dev-T, dishonesty and threat, because this immorality and reputation are what Hubbard wanted and do give them the imagined advantage they imagine they need. Scientology's leaders desire to be known for the very base, animal nature that Scientology

claims is responsible for all human ills. Scientology claims that Hubbard's "technology" alone is the cure for that base nature, and David Miscavige claims that his personal corporation Religious Technology Center owns Hubbard's tech. Attached hereto as Exhibit F is an unpublished opinion filed June 29, 1994 in Religious Technology Center, Church of Scientology International and Church of Scientology of California v. Joseph Yanny, California Court of Appeal Case No. B058291, Los Angeles Superior Court Case No. C690211, wherein Justice Staniforth writes:

> "This appeal court and the trial court below was used as a means in Scientology's pursuit of the "fair game," policy of punishing those who leave Scientology without Scientology's approval. This appears to be a continuation of the fair game procedures of Scientology to discredit and to destroy and ruin an adversary by whatever means available. [Cites, including Scientology v. Armstrong (1991) 232 Cal. App.3d 1060]" (Ex.F, p. 29)

and:

> "This was an appeal (by Scientology) on unproved--rejected as false--facts. This appeal and its delays and total lack of merit must be viewed in conjunction with the other groundless similar lawsuit pursued against Yanny. Such evidence leads to the conclusion that this proceeding was a device for destroying Yanny and any lawyers who chose to work with him. This

appeal is the "Fair Game" of Scientology infamy at work." (Ex.F, p. 31)

The "other groundless similar lawsuit pursued against Yanny" is Los Angeles Superior Court Case No. BC 033035, wherein Scientology sued Joseph Yanny, alleging, based on no facts other than ones Kendrick Moxon, another lawyer in Ms. Bartilson's firm, mocked up, that Mr. Yanny was defending me in Scientology litigation.

12. Ms. Bartilson states that she has "agreed to supply the Marin Court with every document defendant claims should be a part of the file." (Scientology's Ex Parte Application at 2:20-22). Ms. Bartilson has, however, only made this "agreement" because of Mr. Greene's and my refusal to bend before her threats. In her letter of November 8 (Ex. G to her declaration) she states, for example:

> "3. OSC exhibits: None of these appear on the Los Angeles Court docket, and none appear to be retained by that court. If they are not part of the Los Angeles court files, they cannot be transferred."

She did not agree to have these exhibits located, and did not agree to provide them to make the transferred file complete. This is understandable when Scientology's peccant litigation policy of creating the greatest possible confusion for its enemies is recognized. Based on the perjured charging declarations Ms. Bartilson signed for the organization, Scientology actively prosecuted me for a year and a half, urging

the LA Superior Court over and over to jail me for "violations" of the injunction entered May 29, 1992 in this case, "violations" which Ms. Bartilson and her organization manufactured. Now, after a lengthy evidentiary hearing this past July, which resulted in all contempts against me being discharged, a result Scientology did not appeal, the exhibits entered into evidence are, according to Ms. Bartilson, simply not part of the file. It is my intention, moreover, to bring a cross-complaint for abuse of process in connection with Scientology and its lawyers' efforts to have me prosecuted for contempt of court; thus these missing exhibits are not as Ms Bartilson asserts "such things as books and videotapes which plaintiff had lodged in Los Angeles and had returned to it by the clerk, and evidentiary documents which had been served on Mr. Greene but never filed." (Scientology's Memorandum of Points and Authorities at 4:25-28) Nowhere does Ms. Bartilson state what steps she took, if any, to obtain the missing exhibits, and other missing documents relating to the contempt charges, from the LA Superior Court. This also is understandable because Scientology is never able to completely snuff out anyone's God-given decent nature, and Ms. Bartilson, even after years of using her professional status to further her organization's abuse of the innocent, would rather that all her lying and trying to get me jailed had never happened. It was a nightmare for me for a year and a half to have a dishonest lawyer and her dishonest cultic cohorts do whatever they could using the courts' authority and powers to have me jailed. Scientology's

actual but hidden purpose in having me jailed, and why Ms. Bartilson and the rest of the organization's litigation machine worked so diligently to achieve that end, is spelled out by L. Ron Hubbard in his Bulletin entitled "Secret - Why Thetans Mock Up" dated October 1, 1969, a copy of which is attached hereto as Exhibit G:

> "Jailing is a sure way to confirm criminals and also make them crazy as well." (Ex. G, p. 2)

Scientology has dramatized its intention to make me crazy for over twelve years, ceaselessly scheming, and working to get some court who might listen to its lies to jail me. Ms. Bartilson's ex parte application is another unpretty dramatization of that evil intention.

13. Ms. Bartilson states that "defendant and his counsel have succeeded in keeping the case from the Court (and pending dispositive motions resolved) for more than two months." (Scientology's Points and Authorities at 2:6-9) The only possible delays Ms. Bartilson can actually point out are a few days after she first contacted Mr. Greene requesting that he stipulate to the procedure of review of the transferred file and the few days between when Scientology's paralegal reviewed the file and when I reviewed the file. Because, however, I am to Ms. Bartilson and her organization "fair game," it is just ducky with her to stretch the truth of a couple of weeks at most into a Scientological lie of two months.

14. Ms. Bartilson states that "Armstrong did not review the

file until November 7, 1994." (Scientology's Memorandum of Points and Authorities, at 4:21-22). As stated in paragraph 3 above, I was unable to review the file on November 3 only due to the clerk's absence, did review the file on November 4, and completed my review on November 7.

15. Ms. Bartilson states that "[t]he file is now here; thanks to the efforts of plaintiff's counsel's paralegal, it is organized and ready for the clerk to proceed." (Scientology's Memorandum of Points and Authorities at 2:9-11) The file is not organized and it is not ready for the clerk to proceed. Ms. Bartilson makes much of her organization dispatching one of its paralegals from Los Angeles to review the transferred file. Scientology corporate deponent, Lynn R. Farny, testified recently in the Armstrong IV lawsuit that even Church of Scientology International, the corporate component the organization uses as its plaintiff in the II, III and IV cases, has upwards of 50 people in its legal department doing the work for the organization that I do for Mr. Greene; so it is no big deal for Scientology to fly its people all over the world to carry out its silly schemes or go through other people's files. It would be a big deal if they told the truth about the schemes and the files.

16. Ms. Bartilson states that "[d]efendant, however, has failed and refused to cooperate with plaintiff in providing the Court with the few documents which will make the file complete." (Scientology's Points and Authorities at 2:11-14) To make this attack Ms. Bartilson has apparently and not inconveniently

forgotten that, in order to obtain our agreement to the transfer of the case and its file to Marin County from Los Angeles, she promised that Scientology, not me or Mr. Greene, would be responsible for "payment of costs and fees of the transfer." (Stipulation and Order Changing Venue, Exhibit A to Bartilson Declaration) Failing and refusing herself to provide the Court with the missing documents, which she agreed to do, she charges that I failed and refused to provide them. Ms. Bartilson follows a basic Scientology maxim that "the bank follows the line of attack." Hubbard's idea is that the common denominator among people is their "reactive mind" or "bank," which he blamed for all human ills and invented and sold his gilt psychotherapy "auditing" to eliminate. Hubbard trained his intelligence, legal and public relations personnel in the concept that all one has to do is attack something or someone, and other uninvolved people, in reaction to the attack, will follow the line of attack and join it against the thing or person being targeted. Pursuant to Hubbard's "technology," Ms. Bartilson and her organization attack me, with the intention of restimulating the "reactive bank" of the Judge, who must read their attacking papers, to get him to join their attack. Hubbard taught that if one attacks long and hard enough others will follow your attack line and you will win. He also taught, but "forgot," that this sort of continual attack on imagined enemies is what identifies the truly crazy.

17. Ms. Bartilson states that [t]he delay deliberately caused by defendant is inexcusable, and has forced plaintiff to

the expense of bringing this motion." (Scientology's Ex Parte Application at 2:26-28) She also states that Mr. Greene's and my "willful failure to comply with their stipulation, which has had the effect of grinding the case to a halt, is a clear example of a 'bad-faith action or tactic' that is 'solely intended to cause unnecessary delay.'" (Scientology's Memorandum of Points and Authorities at 6:7-11) These claims of delay are absurd, and the idea that I have forced her organization to bring this motion, application, or any of the rest of its dev-T, lies and threat is truly miscavigian in its megalomadness. Discovery has continued. Scientology has taken my deposition during this period, and the depositions of three of my friends. I have continued to provide discovery to Scientology. The transfer of the case, at Scientology's request, to Marin, moreover, extended the whole case over 6 months; so the organization will have months left before trial to keep its fair game litigation machine rolling; months more than it had before I agreed to the transfer of the LA case. The fact is, it is Scientology, in dramatization of its own hubbardian dictum that "the overt doth scream loudly in accusation," which engages, and religiously, in bad faith delaying tactics, as will be seen as this case moves to trial. Though quick to do meanness, Scientology delays any justice, and refuses to be just itself. This has been its pattern in all the cases it has brought against me, a pattern spelled out in the declaration of U.S. District Court Judge James M. Ideman dated June 17, 1993, filed June 21, 1993 in Religious Technology

Center, Petitioner v. U.S. District Court, Respondent, David Mayo, Real Party in Interest, No. 93-70281 in the 9th Circuit Court of Appeals, a true copy of which is appended hereto as Exhibit H:

> "[Scientology's] noncompliance [with the Court's discovery orders] has consisted of evasions, misrepresentations, broken promises and lies, but ultimately with refusal. As part of this scheme to not comply, [Scientology has] undertaken a massive campaign of filing every conceivable motion (and some inconceivable) [Judge Ideman's parens in original] to disguise the true issue in these pretrial proceedings. Apparently viewing litigation as war, [Scientology] by this tactic [has] had the effect of massively increasing the costs to the other parties, and, for a while, to the Court. The appointment of the Special Master 4 years ago has considerably relieved the burden to this Court. The scope of [Scientology's] efforts have to be seen to be believed..... Yet it is almost all puffery -- motions without merit or substance."
>
> (Ex. H, p. 2, para 4, 5)

In this lawsuit, while receiving every possible morsel of discovery from me, and all the while howling "delay," Scientology has yet to produce to me one document.

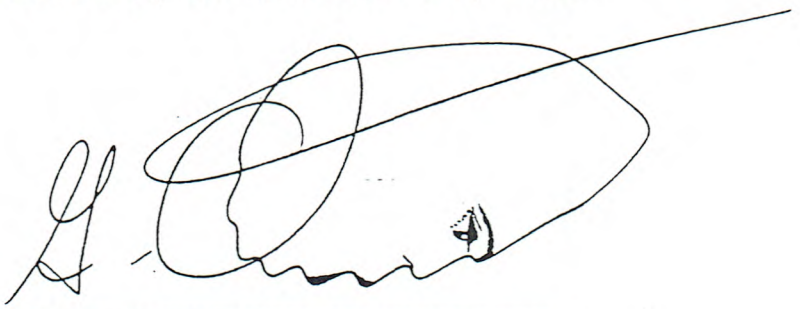
18. It is time that this and every court into which Scientology sends its corporate entities refuse to allow itself

to follow this organization's line of attack and refuse to be used any longer in its pursuit of fair game.

19. I have spent 11 hours dealing with Scientology's ex parte application. My rate for this sort of work is $55.00 per hour.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Anselmo, California, on November 16, 1994.



GERALD ARMSTRONG

700727

700728

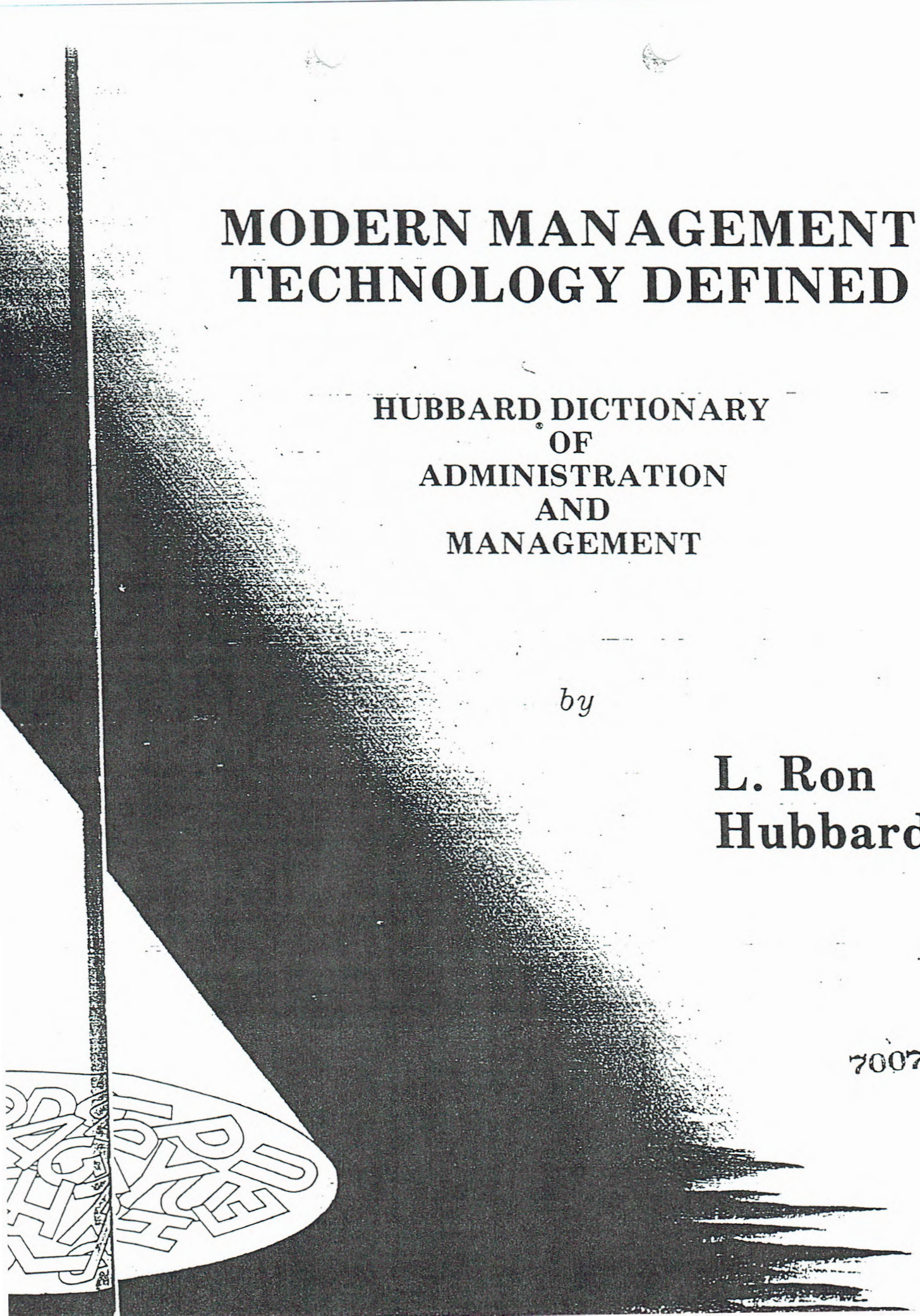
EXHIBIT A

MODERN MANAGEMENT TECHNOLOGY DEFINED

HUBBARD® DICTIONARY OF ADMINISTRATION AND MANAGEMENT

by

L. Ron Hubbard



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This book is part of the works of L. Ron Hubbard, who developed DIANETICS™ spiritual healing technology and SCIENTOLOGY® applied religious philosophy. It is presented to the reader as a record of observations and research into the nature of the human mind and spirit, and not as a statement of claims made by the author. The benefits and goals of SCIENTOLOGY can be attained only by the dedicated efforts of the reader.

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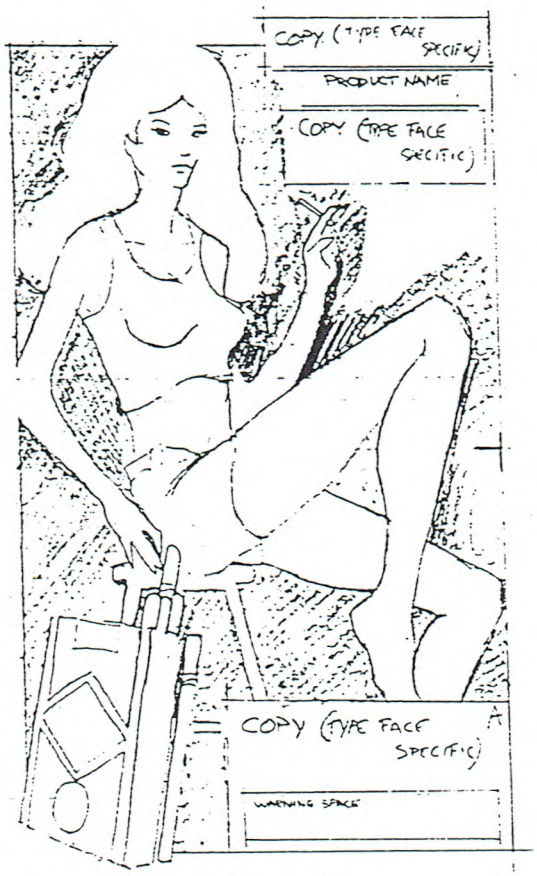
Tech Div Programs and Administrative Officer. (BPL 2 Jul 73R)

DERIVED, formed or developed out of something else, which is to say something formed or made from a basic. (HCO PL 9 Nov 68)

DESIGN, 1. the artful format that will interest and lead the viewer to involvement in and finally desire to act (to attain, to fight, to abandon, etc.). (FO 3574) **2.** a plan or scheme intended for subsequent execution; the preliminary conception of an idea that is to be carried into effect by action; the plan of a building or any part of it after which the actual structure is to be completed; a delineation, pattern. (FSO 823)



Design (Def. 1)

DESIGN AND PLANNING COUNCIL, this **Council** is composed of the following: Captain FSO (as D/Chairman), Supercargo FSO (Secretary), Chief Officer FSO, Chief Engineer, First Mate, Purser, LRH Comm FSO. It is understood that the Commodore is the Chairman of this Dept 21 Council and that the Captain takes the chair in his place; the function of the LRH Comm is to keep in policy on the council's proceedings and actions. Any action to change the use or appearance of any space aboard may only occur with the approval of the **Design and Planning Council.** Any proposal to install new machinery must have the **Council's** approval before submission to FP. No mest of the ship may be disposed of without the specific approval of the **Council,** including the method of disposal. (FSO 823)

DESIGN AND PLANNING SECTION, section of Dept 21 in the Office of LRH FSO under the administrative care of the LRH Comm FSO. The early org board of the SO had this function in its Div 2 under the supervision of the Supercargo. The purpose of the Flag **Design and Planning Section** is threefold: to coordinate all designing and planning and executions thereof which change or extend Flag's spaces and materiel; to help the Commodore increase and maintain the profitable and viable utilization of Flag's spaces and materiel; to help the Commodore viably enhance and maintain the internal and external appearance of the flagship. (FSO 823)

DESIGN STAGE, (graphic arts) there is a **design stage.** This is how it is going to be folded or prettied up and where what goes and the kind of type, paper, etc. (ED 459-51 Flag)

DESKILLED, a job that has been deskilled is one where automation or specialization have reduced the skills needed for the job to a point where only relatively simple actions remain.

DESK RESEARCH, see RESEARCH, DESK.

DESK TRAINING, see TRAINING, DESK.

DEVALUATION, a reduction of the exchange rate which a country demands for its currency; to lessen in value.

DEVELOP, (increase) as in **develop** traffic. (HCO PL 27 Jan 69)

DEVELOPED TRAFFIC, 1. any executive getting **dev-t** knows at once what posts are not held because **dev-t** is the confusion that should have been handled in that area by someone on post. With that stable terminal not stable, **dev-t** shoots about. (HCO PL 27 Oct 69) **2.** traffic is developed (**developed traffic, dev-t**) by originating or forwarding an off-line or off-policy dispatch to anyone but the sender. (HCO PL 17 Nov 64) **3. developed traffic** is a statement you will begin to see now. It is condemnatory. The symbol **dev-t** means on a dispatch, "This dispatch exists only because its originator has not handled a situation, problem, or

an executive order." It also means, "Responsibility for your post very low." Also it means "You should be handling this without further traffic." It also means "You are manufacturing new traffic because you aren't handling old traffic." Also it means "For Gawd's sake!" Every time traffic is developed somebody has flubbed. **Developed traffic** does not mean usual and necessary traffic. It means unusual and unnecessary traffic. (HCO PL 2 Jul 59 II) 4. additionally needless, inhibitive actions are called **dev-t.** Non-compliance, alter-is, no report, false reports, off-origin statements and dispatches, stale dated orders, wrong targets, cross orders, cross targets, are all **dev-t.** They made a great many motions necessary where only the one correct one was needed. (OODs 22 Jan 68) *Abbr.* Dev-t.

Developed Traffic

DEV-T-ITIS, a good way to drive someone nutty is to dev-t them by leaving incomplete cycles in their work area. Suppressive persons must surely have a great time with this type of game! To come into one's working space and to constantly find one's work undone, messes left, things that should be put away left out, and so on. It's enough to make any conscientious person first puzzled, then irritated, then angered, and finally, go into despair. The end product? "Well, no one else cares. Why should I bother?" The sad thing is that most of this **dev-t-itis** doesn't come from suppressive persons but from your "well-meaning" co-worker. Being dispersed by what is obviously too much randomity, they pour a glass of milk and leave the container on the counter to dev-t someone else or to go to waste. Their attention is dispersed by so many incomplete cycles they haven't handled that as soon as the glass is filled, they shift their attention off the container and it's forgotten. So, someone else has to put it away, and also clean up the bit that was spilled. The sloppy job seems to go hand-in-glove with this. (FO 3127)

DEV-T LOG, each staff member keeps a **dev-t log** and writes down the name of anyone he is getting dev-t from. (HCO PL 9 Mar 72 III)

DEV-T MERCHANT, if a new person hasn't gripped it (new post) in a week, is still begging for help from all, he's a **dev-t merchant.** Unload, he won't be any better in ten weeks and the org will be a lot worse. Such a person can't be at cause over the job and will only destroy the post (as witness the way you have to do his work as well as your own—dead post). You have to have three staff members extra for every **dev-t merchant** you have on staff. Why—because the coin has "efficient" on one side and "destructive" on the other—and it never stands on edge. There are no cases on staff—ever. Cases exist only in sessions. (HCO PL 18 Oct 59)

DEV-T REPORT, staff member **report** stating whether off-line, off-policy or off-origin and from whom to whom and subject. (HCO PL 1 May 65)

DEXTERITY, 1. Showing acute skill in the use of the hands, body or a body part. 2. the degree of cleverness exhibited in the execution of some action.

DIALECTIC MATERIALISM, 1. this philosophy is crudely stated in the following statement: It takes two opposing forces to produce an idea. (HCO PL 14 Aug 63) 2. philosophy that force versus force produces ideas. Actually, ideas versus ideas produce force. (SH Spec 46, 6411C10) 3. the anatomy of a problem gone mad. A current philosophy. (SH Spec 68, 6510C14)

DIANA, 1. the oldest yacht in the Sea Org. (OODs 28 Feb 69) 2. *Enchanter's* name is changed to *Diana.* (Ron's Journal 1968)

DIANETIC CASE SUPERVISOR, (Dn C/S) C/S or C/Ses who handle all routine C/Sing of Dn including Drug Rundowns. (HCO PL 25 Sept 74)

DIANETIC CLEAR, 1. there is such a state. Only about 2% go actually Clear on Dn. A **Dianetic Clear** or any other Dn pc now goes on up through the grades of Scn and onto the proper Clearing Course. The **Dianetic Clear** of Book I was clear of somatics. The Book I definition is correct. This is the end phenomenon of Dn as per the Classification Chart and Book I. Two per cent, no more, make **Dianetic Clear** accidentally. They still need expanded lower grades to make Scientology Clear. Becoming a **Dianetic Clear** does not stop them from getting power processing. (LRH ED 101 INT) 2. a **Dianetic Clear** is just a release, not a real Clear. (LRH ED 104 INT)

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EXHIBIT B

-41.

GUARDIAN COPY

GC 1Aa
To all
A/Gs
D/G Legals
PROs
Bur 4s

7 October 1971

RE: BOOKS & ENTHETA WRITTEN ABOUT SCIENTOLOGY
BY SPs

In the UK, the following legal actions have been done on enthota books which have been written about Scientology.

1. Satans Slaves - this was a book all about Charles Manson and hippie cults in California. In several places, throughout the book, Charles Manson was mentioned as a former Scientologist (untrue) and it was alleged that he got his start with Scientology etc.

The publishers of the book were sued for libel -- they did not serve a defence but instead asked for settlement. It was agreed that they would pay us £100 damages, together with the costs of the action. They also agreed to make an apology in open court and to discontinue publication and sales of the book.

2. A psychologist by the name of Dr. Christopher Evans was writing a book entitled '20th Century Cults". Legal started writing to him and his publishers and later his lawyers. No proceedings were started because the book had not been published. However, endless letters were sent to and fro over a period of about a year, during which time it was made clear to the publishers and their lawyers that if they published the book, they would have to fight a legal action, which would lose them money.

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Finally the publishers lawyers wrote to us to say that there was no point in continuing the correspondence because the publishers had now decided not to publish the book. As of this date the book has not been published.

3. C. H. Rolph, (small time author and journalist), was commissioned by the NAMH U.K. to write a book on the subject of the NAMH conflict with Scientology, from their viewpoint. PRO got in touch with Rolph - Rolph came down to SH and there were a series of friendly letters. Rolph finally submitted his manuscript to PRO but, in spite of the friendly visits, it turned out that he was just a NAMH hack and had written an attack.

Legal wrote to him and his lawyers, and pointed out that publication would be a contempt of court (because of other legal actions which we have against the NAMH). The book has not been published.

4. "Scientology, what it is - what it does" by Rev. Morris Burrell was the first book published in the UK, solely on the subject of Scientology. Burrell had been in comm with PRO and a long series of letters had passed between them. But once again, the book when published turned out to be hostile. The front cover of the book contained the Scientology double triangle and our first thought was to begin legal proceedings for infringement of trademark. However, on reading the book, it was discovered that Burrell had mentioned a number of libel actions in which CofS was engaged and had commented upon them.

EXHIBIT B

2

Thus, being a contempt of court, legal moved the court for an order "that Morris C. Burrell do stand committed to Her Majesty's Prison at Brixton and that the publishers may be so committed for their several and respective contempts".

So, legal took them to Court, and the Judge found that the book was a contempt of court. So the book was drawn from publication without any copies having been sold to the public.

The latest book is by Cyril Vosper called "The Mindbenders", a stupid bit of matter. A preview of the book was sent out by the publishers, and PRO was alerted by a phone call from a TV station, who wanted a confrontation on TV with Cyril Vosper. This gave the G.O. 24 hours to stop the book, the TV confrontation and attendant bad publicity.

The book contained numerous quotes from Scientology books and policy letters etc and contained some data which Vosper had learned on the Solo Course. Legal proceedings were brought on the basis of breach of copyright and breach of confidential relationship (meaning putting in details of the Solo Course). As time was short, 34 did a superb job of getting data, PRO did a superb job of stalling TV, and Legal went round to the Judge in the evening at his own home, to ask for an injunction. (An injunction is a Court order stopping a person from doing a particular act). In this case the injunction was to prevent the book from being sold or distributed. PRO went down to the TV station, to be ready to appear, in case the injunction was not obtained. The programme announcer had already made his introductions on Cyril and his book, when the phone rang in the studio, and our lawyer informed the producer that the injunction had been obtained. The announcer was forced to apologize to the viewers, and PRO handled the resultant tension after the programme had not gone on, with a drunken Vosper and furious producer.

The injunction was Ex parte (the other side was not present when it was obtained) and 3 weeks later legal went before the Court again for a contested hearing, to see whether the injunction should be continued or not. Legal won on both counts of copyright and breach of confidence. The other side now have 14 days in which to appeal.

The point of relating these actions is to indicate that the following countries have similar laws to Britain:

New Zealand

Australia

South Africa

Canada

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There is no acceptable justification in these countries for no action being taken against the publishers authors of entheta books. The G.O. has to act fast, effectively and with imagination. The skill required is in

1) Having the brains to see a possible course of action, no matter how unlikely.

2) Having the necessary organisation to start that action immediately and bring it to a point of confrontation and decision. (The longer the delay, the greater the chance of failure).

EXHIBIT B

3) [illegible] of ever, [illegible] its chances of winning before commencing action. Its ability lies in getting the action into court fast, without a Q&A on the chances of winning. No-one can accurately assess in advance the chances of winning or losing, as this is a matter of individual lawyers, individual judges, how many are breaks the judge has that way, the particular circumstance of the particular case which strikes the Judge and good fortune. Good fortune never strikes you in Court, unless you are in Court.

4) Legal U.K. has been in courts more often in the past 3 years than the rest of the Scientology world combined. They have won more cases and lost more cases than anywhere else. They lost cases they were sure they would win, and won cases they were sure they would lose. The losses did not hurt us, and the successes established an iron clad ethics presence, which has probably prevented more enthetа than we will ever know about (B4 feedback lines confirm this).

5) Do not worry about whether you will win or lose, but direct all effort and concentration on the legal technicalities required to achieve a legal confrontation.

6) It is always technically possible - though sometimes difficult, to get into Court. The most difficult part is in forcing your legal team, especially outside lawyers, to get this done, in spite of their terror of losing. It requires intention, determination and forceful persistance to get this done. Not legal genius.

Re USA

In America, where Freedom of Speech includes freedom to malign with impunity, except for old ladies and crippled men, much more imagination is required. Because of the Constitution of America, and case law on libel, inclusive of recent Supreme Court decisions, it is impossible to prevent publication of libel. Attempts to prevent a book being published are called pre-publication censorship, and are extremely unpopular legally. However, where U.S. legal has been successful is prior to Court appearances and actual trial in effecting settlement.

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The button used in effecting settlement is purely financial. In other words, it is more costly to continue the legal action than to settle in some fashion. Using this, legal U.S. usually moves for retraction of the libel and/or publication of a correction or Scientology viewpoint.

Therefore, it is imperative that legal US Dev-T his opponents and their lawyers with correspondence (a lawyer's letter costs approx $50), phone calls (time costs), interrogatories, depositions and whatever else legal can mock up.

One of the bright spots of US legal is that even if you lose you don't pay your opponent for his lawyers fees. Therefore the cost of any legal action is small by comparison with Commonwealth Countries, where the loser pays everything.

N.B.: Any legal action on enthetа publications needs the close co-ordination of PR, Legal and B4. One should carry forward without being afraid of being labelled Litigious. We want the reputation that we use the laws of

EXHIBIT B

to uphold our legal and civil rights.

Legal terminals have only just been set up although the laws are different from Commonwealth and there are actions which can be taken if they are pushed and forced through.

Up to this point, the G.O. has been entirely [illegible] by our wog lawyers negative opinions but legal [illegible] should note the message in this Guardian order.

The message is that in combatting entheta articles and books, legal should be agressive, fast, persistent and untiring.

Every skirmish should be treated like a major battle.

Jane Kember
Guardian World Wide

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EXHIBIT B

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EXHIBIT C

HUBBARD COMMUNICATIONS OFFICE
Saint Hill Manor, East Grinstead, Sussex

HCO POLICY LETTER OF 3 FEBRUARY 1966

Remimeo
SH and WW only
Executive Hats
All HCO Mail Point Hats
All 'Phone Point Hats
To be enforced by
Dir Comm and Ethics

IMPORTANT

LEGAL, TAX, ACCOUNTANT AND SOLICITOR, MAIL AND LEGAL OFFICER

There is all manner of legal type letters, government letters, accounting notices, assessments and such and phone calls received by persons in the org and this Pol Ltr FORBIDS it being routed all over the org to anyone and everyone.

IT ALL GOES TO THE LEGAL OFFICER

I don't care *who* it is addressed to, or who is being called for if it looks or sounds lawyer or legal or tax or T & C Planning or Council or *anything* like legal or government IT MAY NOT BE ROUTED TO ITS ADDRESSEE but *must* FIRST go to the Legal Officer only.

Anyone found *holding* or receiving or *finding* any legal or tax or planning matter or letter or phone call without its being routed first and at once to the Legal Officer will be reported at once to Ethics and Ethics is to hold a hearing.

The Legal Officer is hereby authorized to have a clerk. The clerk is to keep legal files and is to receive all such legal matters, letters, summonses, etc.

The Legal Clerk may then Xerox a copy and send the copy only to the addressee. But must keep the original and must show it to the Legal Officer before even a copy is sent.

ALL OUTGOING MAIL to attorneys, tax cruds, the alleged government, the Council, etc. AND A FULL RECORD OF EVERY VERBAL CONFERENCE ON SUCH MATTERS must be sent to the Legal Officer BEFORE MAILING or before being held binding and must not be sealed or ratified before so sending it to the Legal Officer.

NO STENO may mail a legal type letter or get it signed unless it is FIRST SENT TO THE LEGAL OFFICER FOR OK.

Without that okay it may not be signed or mailed.

No officer, executive or person in the organization may make legal contacts or

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EXHIBIT D

The

Technical Bulletins

of

Dianetics and Scientology

by

L. Ron Hubbard

FOUNDER OF DIANETICS AND SCIENTOLOGY

Volume

II

1954–1956

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Dianetics® and Scientology® are registered names.

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Dianetics and Scientology are the trademarks of L. Ron Hubbard in respect of his published works.

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IN ALL SUCH CASES OF ARREST FOR THE PRACTICE OF SCIENTOLOGY, THE HASI WILL SEND A REPRESENTATIVE AT ONCE, BUT DO NOT WAIT FOR HIS ARRIVAL TO PLACE THIS SUIT. THE SUIT MUST ALREADY HAVE BEEN FILED WHEN THE HASI ATTORNEY ARRIVES.

In other words, do not, at any moment leave this act unpunished, for, if you do you are harming all other Scientologists in the area. When you are attacked it is your responsibility then to secure from further attack not only yourself but all those who work with you. Cause blue flame to dance on the courthouse roof until everybody has apologized profusely for having dared to become so adventurous as to arrest a Scientologist who, as a minister of the church, was going about his regular duties. As far as the advices of attorneys go that you should not sue, that you should not attack, be aware of the fact that I, myself, in Wichita, Kansas, had the rather interesting experience of discovering that my attorney, employed by me and paid by me, had been for some three months in the employ of the people who were attacking me, and that this attorney had collected some insignificant sum of money after I hired him, by going over to the enemy and acting upon their advices. This actually occurred, so beware of attorneys who tell you not to sue. And I call to your attention the situation of any besieged fortress. If that fortress does not make sallies, does not send forth patrols to attack and harass, and does not utilize itself to make the besieging of it a highly dangerous occupation, that fortress may, and most often does, fall.

The DEFENSE of anything is UNTENABLE. The only way to defend anything is to ATTACK, and if you ever forget that, then you will lose every battle you are ever engaged in, whether it is in terms of personal conversation, public debate, or a court of law. NEVER BE INTERESTED IN CHARGES. DO, yourself, much MORE CHARGING, and you will WIN. And the public, seeing that you won, will then have a communication line to the effect that Scientologists WIN. Don't ever let them have any other thought than that Scientology takes all of its objectives.

Another point directly in the interest of keeping the general public to the general public communication line in good odor: it is vitally important that a Scientologist put into action and overtly keep in action Article 4 of the Code: "I pledge myself to punish to the fullest extent of my power anyone misusing or degrading Scientology to harmful ends." The only way you can guarantee that Scientology will not be degraded or misused is to make sure that only those who are trained in it practice it. If you find somebody practicing Scientology who is not qualified, you should give them an opportunity to be formally trained, at their expense, so that they will not abuse and degrade the subject. And you would not take as any substitute for formal training any amount of study.

You would therefore delegate to members of the HASI who are not otherwise certified only those processes mentioned below, and would discourage them from using any other processes. More particularly, if you discovered that some group calling itself "precept processing" had set up and established a series of meetings in your area, you would do all you could to make things interesting for them. In view of the fact that the HASI holds the copyrights for all such material, and that a scientific organization of material can be copyrighted and is therefore owned, the least that could be done to such an area is the placement of a suit against them for using materials of Scientology without authority. Only a member of the HASI or a member of one of the churches affiliated with the HASI has the authority to use this information. The purpose of the suit is to harass and discourage rather than to win.

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The law can be used very easily to harass, and enough harassment on somebody who is simply on the thin edge anyway, well knowing that he is not authorized, will generally be sufficient to cause his professional decease. If possible, of course, ruin him utterly.

A D.Scn. has the power to revoke a certificate below the level of D.Scn. but not a D.Scn. However, he can even recommend to the CECS of the HASI that D.Scns. be revoked, and so any sincere Scientologist is capable of policing Scientology. This is again all in the interest of keeping the public with a good opinion of Scientology, since

EXHIBIT A

bad group proce[illegible]and bad auditing are worse than bad [illegible]licity and are the worst thing that can happen to the general public to general public [illegible]mmunication line.

The best thing that can happen to it is good auditing, good public presentation, and a sincere approach on the subject of Scientology itself. Remember, we are interested in ALL treatment being beneficial, whether it is Scientology or not. For bad treatment in any line lowers the public opinion of all treatment.

In addressing persons professionally interested in the ministry, we have another interesting problem in public presentation. We should not engage in religious discussions. In the first place, as Scientologists, we are gnostics, which is to say that we know that we know. People in the ministry ordinarily suppose that knowingness and knowledge are elsewhere resident than in themselves. They believe in belief and substitute belief for wisdom. This makes Scientology no less a religion, but makes it a religion with an older tradition and puts it on an intellectual plane.

Religious philosophy, then, as represented by Scientology, would be opposed in such a discussion to religious practice. We are all-denominational rather than non-denominational, and so we should be perfectly willing to include in our ranks a Moslem, or a Taoist, as well as any Protestant or Catholic, while people of the ministry in Western civilization, unless they are evangelists, are usually dedicated severely to some faction which in itself is in violent argument with many other similar factions. Thus these people are ready to argue and are practiced in argument, and there are more interpretations of one line of scripture than there are sunbeams in a day. Beyond explaining one's all-denominational character, explaining that one holds the Bible as a holy work, one should recognize that the clergy of Western Protestant churches defines a minister or the standing of a church by these salient facts: Jesus Christ was the Savior of Mankind, Jesus Christ was the Son of God.

We in Scientology find no argument with this, and so in discussing Scientology with other ministry one should advance these two points somewhere in the conversation. Additionally, one should advance to the ministry exactly those things mentioned earlier as what we would like the general public to believe. Christ, if you care to study the New Testament, instructed his disciples to bring wisdom and good health to man, and promised mankind immortality, and said the Kingdom of Heaven was at hand, and the translators have not added that "at hand" possibly meant three feet back of your head. We could bring up these points but there is no reason to. You are not trying to educate other ministry. A friendly attitude toward other ministry in general, and fellow ministers in particular, is necessary.

The way to handle an individual minister of some other church is as follows: get him to tell you exactly what HE believes, get him to agree that religious freedom is desirable, then tell him to make sure that if that's the way he believes, he should keep on believing that, and that you would do anything to defend his right to believe that.

None of these people as individuals are antipathetic. They know a great deal about public presence, and can be respected for such knowledge. However, engaging in long discourses, or trying to educate a minister of some Protestant church or a priest of the Catholic faith into the tenets of Scientology is not desirable and is directly contrary to Article 10 of the Code of a Scientologist.

You will find you have many problems and people in common with other ministers. They're alive too. Also you will see a campaign to place only ministers in charge of the mind and mental healing. Talk about these things.

The Christian Church has been hurt by factionalism. We stand for peace and happiness. Therefore, let us carry it forward by example, not by unseemly discussions.

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2. SCIENTOLOGISTS TO THE GENERAL PUBLIC

In the assemblage of congregations, and in addressing the general public at large, a Scientologist has a responsibility to give to the public, in the form of such congregations or meetings, information acceptable to them, which can be understood by them, and which will send them away with the impression that the Scientologist who addressed them knew definitely what he was talking about and that Scientology is an unconfused, clear-cut subject.

EXHIBIT A

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EXHIBIT E

HUBBARD COMMUNICATIONS OFFICE
Saint Hill Manor, East Grinstead, Sussex

Remimeo

HCO POLICY LETTER OF 18 OCTOBER 1967
Issue IV

PENALTIES FOR LOWER CONDITIONS
(Applies both Orgs and Sea Org)

LIABILITY - Suspension of Pay and a dirty grey rag on left arm and day and night confinement to org premises.

TREASON - Suspension of pay and deprivation of all uniforms and insignia, a black mark on left cheek and confinement on org premises or dismissal from post and debarment from premises.

DOUBT - Debarment from premises. Not to be employed. Payment of fine amounting to any sum may have cost org. Not to be trained or processed. Not to be communicated or argued with.

ENEMY - SP Order. Fair game. May be deprived of property or injured by any means by any Scientologist without any discipline of the Scientologist. May be tricked, sued or lied to or destroyed.

LRH:jp

L. RON HUBBARD
Founder

700746

700747

EXHIBIT F

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

RELIGIOUS TECHNOLOGY CENTER, a California non-profit religious corporation; CHURCH OF SCIENTOLOGY INTERNATIONAL, a California non-profit religious corporation; and CHURCH OF SCIENTOLOGY OF CALIFORNIA, A California non-profit religious corporation. Plaintiffs and Appellants, v. JOSEPH A. YANNY, an individual, and JOSEPH A. Yanny, a professional Law Corporation. Defendants and Respondents.	No. B058291 (Super. Ct. No. C690211)

APPEAL from judgments of the Superior Court of Los Angeles County. Raymond Cardenas, Judge. Affirmed.

William T. Drescher, attorney for Plaintiffs and Appellants, Religious Technology Center; Eric M. Lieberman et al., attorneys for Plaintiffs and Appellants, Church of Scientology International.

Lewis, D'Amato, Brisbois & Bisgaard; David B. Parker, Jayesh Patel, Matthew D. Berger, Joseph A. Yanny, attorneys for Defendants and Respondents Joseph A Yanny, et al.

STANIFORTH, J., Dissenting:

The plaintiffs (appellants) are the Religious Technology Center ("RTC")[1] Church of Scientology of California ("CSC"), (collectively, Scientology) brought this action against their former attorney Joseph A. Yanny (Yanny)[2] seeking a permanent injunction and damages. Yanny by cross-complaint sought payment for legal services rendered Scientology Churches. The trial commenced before a jury. Four weeks into the jury trial Scientology waived their damages claim, whereupon the trial was bifurcated. The jury was to determine the legal issues (Yanny's cross-complaint) and the equitable issue (injunctive relief) was to be determined by the court.

Scientology's complaint against Yanny and members of his firm was for breach of fiduciary duty, breach of contract, tortious breach of the covenant of good faith and fair dealing, constructive fraud, fraud, intentional interference with contract, civil conspiracy and

---

[1] RTC has been joined in this brief by the other two plaintiffs-appellants, Church of Scientology of California ("CSC") and Church of Scientology International ("CSI"). RTC, CSC and CSI are collectively referred to hereafter as "Appellants" or "Scientology."

[2] Also named as defendants were several associates who had worked for Yanny during the relevant time, including Richard Wynne, Lisa Wilske, Mary Grieco, and Karen McRae, counsel to an individual, Vicki Aznaran.

conversion. Scientology charged, among other things, that Yanny was orchestrating a number of lawsuits against them. Yanny cross-complained for the legal fees owed him.

After a 41-day trial (3 months) the jury awarded Yanny $154,000 damages as attorney fees owed. After hearing the equitable claims the trial court denied injunctive relief. Scientology appeals the adverse judgments.

CONTENTIONS

Scientology contends Yanny and his counsel, Van Sickle, were guilty of deliberate pervasive misconduct so prejudicial as to require reversal; that the trial court failed to instruct as to willful suppression of evidence; and there is a lack of substantial evidence to support the jury award to Yanny. Finally it is urged the trial court erred in refusing to enjoin Yanny from "continuing to aid litigation adversaries in substantially related matters" to his previous employment as attorney for Scientology.

PROCEEDINGS BELOW

Scientology's complaint (filed June 1988, amended August 1988) charged Yanny and his professional corporation and associates with submitting false or inflated bills and thus breach of contract (second cause of action) and

engaged in fraud (fourth cause of action). Plaintiffs also charged Yanny, as well as Herzig & Yanny, with conversion based on their failure to return, among other items, the $150,000 retainer paid Yanny (ninth cause of action), and with fraud for having knowingly made false representations as to Yanny's responsibility for papers served but not filed in a lawsuit in which Yanny represented RTC (sixth cause of action).[3]

On August 4, 1988, the court entered a preliminary injunction prohibiting Yanny, Wynne, and McRae from disclosing or encouraging the disclosure of confidences obtained during their attorney-client relationship with plaintiffs.[4]

In February 1989, Yanny, filed a cross-complaint against Scientology. Yanny charged Scientology had not paid a bill submitted in January 1988 for the period

---

[3] The legal issues submitted in this appeal are no different to those briefed in Scientology's second lawsuit against respondent Yanny. This was a later filed lawsuit, briefed before this particular appeal. Respondents request this court to take judicial notice of this case in the Second Appellate District, Division III, case No. B068261, an appeal from the judgment of a Superior Court of California, County of Los Angeles, case No. BC033035.

[4] This preliminary injunction was based upon the sworn testimony of two persons who were later, upon trial, found not worthy of belief.

October through December 1987 for legal services and expenses. He also asserted causes of action for breach of contract (first cause of action), for account stated (second cause of action), for work, labor and services (third cause of action), and for book account (fourth cause of action). In addition, Yanny alleged a cause of action for quantum merit for $10,500,000, on the ground that plaintiffs had purportedly been unjustly enriched by this sum. The reasonable value of the cross-claimants' services were sought (fifth cause of action). Finally, Yanny claimed that plaintiff exploited him in breach of their covenant of good faith and fair dealing (sixth cause of action). Yanny's plaintiff cross-complaint sought both compensatory and punitive damages.

FACTS

We accept the trial court summary of the evidence relevant to the injunctive issues. These findings are supported by substantial evidence.

The trial court found:

> "An attorney-client relationship existed between Yanny on the one hand and plaintiffs on another giving rise to certain fiduciary, contractual and ethical duties which Yanny continued to owe to plaintiffs after the attorney-client relationship terminated."

"The evidence admitted at trial established that after plaintiffs and Yanny became involved in a dispute over attorney's fees and also the $150,000.00 retainer [the jury found that the retainer was not refundable], plaintiffs' agents Marty Rathbun and attorney Earle Cooley questioned Yanny's integrity and reputation and attacked his motives by attempting to convince Vicki Aznaran not to assist Yanny in any way. As provided in Case Law and the Evidence Code, such conduct by plaintiffs, acting through their agents, partially waived the attorney-client privilege which existed and allowed Yanny to act to protect his interest with respect to his legal reputation and his right to receive payment for legal services rendered in 1987-1988, and to establish his right to the $150,000.00 retainer. At the outset, therefore, plaintiffs waived their right that Yanny not breach the duty of confidentiality or loyalty with respect to matters and confidences that were relevant to the legal dispute between the parties. There was no waiver with respect to confidences unrelated to the dispute.

"The evidence admitted at trial with respect to Yanny established the following:

"(a) Yanny allowed his friends, the Aznarans and Karen McRae, to stay at his house for a period varying between one and two weeks in the latter part of March 1988;

"(b) Yanny discussed Scientology doctrines and listened as Vicki Aznaran (former president of RTC) and Richard Aznaran told of their mistreatment by plaintiffs while he (Yanny) was seeking evidence in support of his claims against plaintiffs. As for the alleged breach of confidences, <u>there is insufficient evidence to prove that Yanny disclosed a client's confidences or secrets</u>. Much has been made about Yanny's knowledge of Scientology's litigation strategies and

weaknesses; however, there was insufficient proof that Yanny disclosed and then held secrets. The evidence disclosed that litigation strategies and weaknesses of plaintiffs were well known to Vicki Aznaran, former President of RTC. Moreover, it was evident (from the evidence) that 'many members of the firm were aware of and familiar with the Wollersheim v. Scientology case which published those things that plaintiffs contend were secret litigation weakness and tactics.'"

"The court was asked to accept the often conflicting and highly impeached testimony of Dorothy Peti as it related to Yanny's conversations with the Aznarans, McRae, Bent Corydon, Lisa Wilske and Mary Grieco at the Hermosa Beach gatherings in March 1988. The court finds that Dorothy Peti's testimony lacked the credibility necessary to support a court's finding that Yanny, Wynne and McRae individually or jointly violated duties owed to plaintiffs." [5]

"Yanny inquired into the ethical questions raised by his possible representation of the Aznarans against plaintiffs, but concluded, for various reasons, that he would not represent the Aznarans. The evidence established that while Yanny may have indicated that he felt he could represent the Aznarans, he elected not to do so. Even if he had, such representation would not have necessarily resulted in a breach of Yanny's ethical obligations, as adverse representation is permissible under certain conditions. (Wutchumna Water Co. v. Bailey (1932) 216 Cal. 564.)"

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[5] A dispassionate reading of the Dorothy Peti's testimony points directly to the falsity of Scientology's claims of Yanny "revealing" any "secrets" of Scientology. There is a strong suspicion that Peti was a "plant," a spy on behalf of Scientology. She reported directly to the Scientology attorneys.

"Yanny assisted the Aznarans in their search for experienced counsel to represent them against plaintiffs."

The court found that Yanny's assistance in this regard including transporting the Aznarans to other attorneys' offices did not constitute a breach of duties owed plaintiffs. There was insufficient evidence to establish that Yanny rendered legal assistance to any prospective attorneys.

The court concluded:

"Yanny was and is an aggressive attorney who is apparently driven by an all-consuming desire to right the wrongs that he believes plaintiffs have committed over the years with respect to him and others. It is this state of mind that blurs his objectivity and has caused Yanny to appear to lose sight of his continuing professional responsibility to the plaintiffs, his former clients--a duty of confidentiality which he will bear so long as he is an attorney. Although Yanny's conduct suggests a ready willingness to disregard legal and ethical responsibilities owed to his former clients, the fact is that plaintiffs failed to prove the allegations of the complaint and did not establish by the evidence the necessary prerequisites for the issuance of permanent injunction."

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Scientology's "undisputed facts" were not accepted by the trial court. More than substantial evidence supports the trial court's denial of injunctive

relief. A dispassionate reading of the reporter's transcript cited by Scientology leads to these conclusions: (1) There was no evidence presented of Yanny entering into any representation of any person, any prospective adversary to Scientology; (2) There is a total lack of evidence that Yanny breached any particular or general fiduciary duties of confidentiality and loyalty owed to his former client.

I

DISCUSSION

Concerning the standard of appellate review of disqualification proceedings this court said in H.F. Ahmanson & Co. v. Salomon Brothers, Inc. & Co., supra, 229 Cal.App.3d 1445 at p. 1451: "In our review of disqualification motions, as elsewhere, the judgment of the lower court is presumed correct and all intendments and presumptions are indulged to support it on matters as to which the record is silent. (Centinela Hospital Ass. v. City of Inglewood (1990) 225 Cal.App.3d 1586.) Conflicts in the declarations are resolved in favor of the prevailing party and the trial court's resolution of factual issues arising from competing declarations is conclusive on the reviewing court. [Citations.]"

See also In re Marriage of Zimmerman (1993) 16 Cal.App.4th 556, 561-562; In re Complex Asbestos Litigation, 232 Cal.App.3d 572, 667, 671; Higdon v. Superior Court, 227 Cal.App.3d 1667, 1671.

II

This court in H. F. Ahmanson & Co. v. Salomon Brothers, Inc., supra, 229 Cal.App.3d 1445, 1451 stated:

> "It is beyond dispute a court may disqualify an attorney from representing a client with interests adverse of a former client. (Wutchumna Water Co. v. Bailey (1932) 216 Cal. 564, 573-574; Gregori v. Bank of America (1989) 207 Cal.App.3d 291, 298.) In re Marriage of Zimmerman, supra, 16 Cal.App.4th 556, 562-563, disqualification in cases of successive representation is based on the prohibition against 'employment adverse to a . . . former client where, by reason of the representation of the . . . former client, the [attorney] has obtained confidential information material to the employment. . . .'" (Rule 3-310, Rules Prof. Conduct [23 West's Ann. Civ. & Crim. court Rules, pt. 2 (1990 Supp.) p. 445; Deering's Ann. Rules of Court (1991 pocket pt.) p. 19].)

Scientology cites a host of cases holding the fiduciary duties of an attorney include the obligation to refrain from aiding parties with interests adverse to the interests of the attorney's former clients in matters

which are substantially related to matters the attorney handled in representing the former clients. (See, e.g., People ex rel. Deukmejian v. Brown, 41 Cal.3d 150, 156-57; Western Continental Operating Co. v. Natural Gas Corp. (1989) 212 Cal.App.3d 752, 758-60; In re Jessica B. (1989) 207 Cal.App.3d 504, 511-12; River West, Inc. v. Nickel, supra, 188 Cal.App.3d 1297, 1302-04; Elliott v. McFarland Unified School District (1985) 165 Cal.App.3d 562, 568-70; Civil Service Commission v. Superior Court (1984) 163 Cal.App.3d 70, 79-81; Dill v. Superior Court (1984) 158 Cal.App.3d 301, 304-305; Woods v. Superior Court (1983) 149 Cal.App.3d 931, 934-35.)

None of these cases are in point. There is no evidence whatsoever that Yanny represents any former client with an interest adversed to those of Scientology. This rule therefore has no application here. The evidence is without contradiction, Yanny determined after examination and consideration not to represent any prospective client in a suit against Scientology. Nor is there any evidence of any threat to represent anyone in an unspecified future litigation against Scientology.

III

The rule against disclosure of confidential information extends beyond representing a client in an action against a former client. "He may not do anything which will injuriously affect his former client in any manner . . . nor may he at any time use against his former clients knowledge of information acquired by virtue of the previous relationship." (Wutchumna Water Co. v. Bailey, supra, 216 Cal. 564, 573-574; Grove v. Grove Valve & Regulator Co. (1963) 213 Cal.App.2d 646, 650-651; Marriage of Zimmerman, supra 16 Cal.App.4th 556, 562 and cases cited therein.)

No evidence was presented to the trial court to suggest that Yanny was revealing "secrets learned in representing Scientology" to anyone. The record is bare of facts to support application of the broader rules cited above. Scientology recognizes its difficult factual problem, admitting:

> "In this case, an entirely different--and unique -- circumstance was presented. Yanny had not made an appearance as counsel of record in any of the actions in which he was aiding adverse litigants. Instead, all of his efforts were made behind the scenes, hidden from the Churches. This placed the Churches in an extremely difficult and unenviable position. Obtaining Yanny's

> disqualification in each of a series of cases while he was disclaiming any role, would have been virtually impossible. First, it is unclear whether a court would have jurisdiction to disqualify an attorney who has made no appearance and denies playing any role in the litigation. Second, proof of Yanny's involvement on a case-by-case basis would, practically speaking, have been impossible. Disqualification orders, moreover, would have been largely useless in any case since by the time the Churches discovered his involvement in a case and moved to disqualify the damage would already have been done. [¶] The Churches' only hope for obtaining effective relief was thus to seek general injunctive relief ordering a halt to his improper conduct precisely what the Churches did here."

In Scientology's attempt to get evidence of Yanny's disclosure of secrets, Scientology relied upon witnesses Dorothy Cota and Thomas Vallier. Cota reported to Scientology attorneys her attendance of meetings where Scientology claims "secrets" were disclosed. An examination of her testimony shows no support for Scientology's factual contention. The trial court found her testimony "highly impeached" and "lacked credibility." The second witness offering testimony to "secrets" disclosed was Thomas Vallier. The trial court found Vallier's testimony "not credible, not supported by other evidence."

A former client's claim of attorney disloyalty, absent any proof of disclosure of confidences, is not actionable. Scientology does not cite a single case to support its legal factual position. Scientology's reliance on disqualification cases do not give life to their cause of action here. As stated in a leading national treatise on attorney malpractice, 1 Mallen & Mith, Legal Malpractice (3d Ed.) at page 804:

> "There must be an actual fiduciary breach which caused real damages. Thus, the 'substantial relationship' between subject matters of representation must be reality and involve actual adversity. A cause of action is not established by showing that the attorney had access to confidential information or that the representation was adverse. The former client must establish not only that the attorney possessed and misused the client's confidences, but also that the fiduciary breach was a proximate cause of injury. (See Stockton Theaters Inc. v. Palermo (1953) 121 Cal.App.2d 616.) (Emphasis added.)"

Scientology was required to prove its claim factually before either injunction or damage relief could be awarded. In these critical requirements Scientology has abjectly failed.

IV

The trial court held it "lacks jurisdiction" to limit the practice of law other than on a case by case basis. The trial judge stated:

> "Although the evidence established no breach by defendants the court further declines to issue an injunction against Yanny and Wynne (California Lawyers) because the Supreme Court of California is the only State Court which can regulate the general practice of law and is the only body which can discipline or disbar attorneys (Jacobs v. State Bar (1977) 20 Cal.3d 191, Business and Professions Code 6100). It belabors the obvious to state that this court cannot regulate the practice of law in any federal court.
>
> "No case previously cited by plaintiffs supports the position that this court can prospectively limit the ability of two attorneys in the instant action to practice law."

Scientology has yet to tender such a case. The judge's decision is in complete conformity with binding California authorities. It could not enjoin Yanny and associates from the practice of law.

In re Complex Asbestos Litigation, supra, 232 Cal.App.3d 572, 600-601, the appeal court set forth the "jurisdiction limits" on the power to disqualify counsel stating at pp. 600-601:

> "The power to disqualify an attorney, as we stated above, derives from the court's inherent power to control the conduct of persons 'in any manner connected with a judicial proceeding before it, in every matter pertaining thereto.' (Code Civ. Proc., § 128, subd. (a)(5); [citation].) This does not mean that a superior court has any inherent or statutory power to control the conduct of persons in judicial proceedings pending before a different superior court. One court may not interfere with the process of another court of equal jurisdiction in a case properly before the latter. [Citations.]"

The trial court's negation of any right or authority to disqualify counsel as to and future representation was correct law yet the rule has no application here. No representation of an adverse party has been shown or threatened.

V

Scientology next contends the misconduct of Yanny and his counsel throughout the trial was deliberate and pervasive and so prejudicial as to compel reversal. When such a charge is made we examine the contention in the light of these basic principles. In Dominguez v. Pantalone (1989) 212 Cal.App.3d 201, 210-211, this court quoted the here relevant statements of the California Supreme Court in Tingley v. Times Mirror (1907) 151 Cal. 1, 23:

"As the [California] Supreme Court noted nearly eighty years ago '[i]t rarely occurs in any case which is of moment and sharply contested that counsel on both sides in their zeal and partisan devotion to their clients do not indulge in arguments, remarks, insinuations, or suggestions which find neither support in, nor are referable or applicable to the testimony, or warranted by any fair theory upon which the case is being presented. If such impropriety of counsel always afforded ground for a new trial, there would be little prospects of any litigation becoming finally determined. It is only when the conduct of counsel consists of a willful or persistent effort to place before a jury clearly incompetent evidence, or the statement or remarks of counsel are of such a character as to manifest a design on his part to awake the resentment of the jury, to excite their prejudices or passion against the opposite party, or to enlist their sympathies in favor of his client or against the causes of his adversary, and the instructions of the court to the jury to disregard such offered evidence or objectionable remarks of course could not serve to remove the effect or cure the evil, that prejudicial error is committed. It is only extreme cases that the court, when acting promptly and speaking clearly and directly on the subject, cannot, by instructing the jury to disregard such matters, correct the impropriety of the act of counsel and remove any effect his conduct or remarks would otherwise have. (Tingley v. Times Mirror (1907) 151 Cal. 1, 23.)'"

In Menasco v. Snyder (1984) 157 Cal.App.3d 729, 732 the appellate court said:

> "In assessing that prejudice, each case ultimately must rest upon this court's view of the overall record, taking into account such factors, inter alia, as the nature and seriousness of the remarks and misconduct, the general atmosphere, including the judge's control of the trial, the likelihood of prejudicing the jury, and the efficacy of objection or admonition under all the circumstances. (See also Simmons v. Southern Pac. Transportation Co. (1976) 62 Cal.App.3d 341, 351.)"

Finally, and applicable to the facts here, the Menasco court stated at page 733:

> "A claim of misconduct is entitled to no consideration on appeal unless the record shows a timely and proper objection and a request that the jury be admonished."

Because the effect of misconduct can ordinarily be removed by an instruction to the jury to disregard it, it is generally essential in order that an act of misconduct be subject to review on appeal, that it be called to the attention of the trial court at the time to give the court an opportunity to so act, if possible as to correct the error and avoid a mistrial. Only misconduct so prejudicial that as admonishment would be ineffective excuses the failure to request such admonishment. (Whitfield v. Roth, 10 Cal.3d 874, 892.) (Emphasis mine.)

VI

The list of purported misconduct is attached as an additional "appendix" to Scientology's Opening Brief. In thirty-seven of those listed instances of purported misconduct, Scientology made no objection at all.[6] Twenty-two of the Scientology objections listed in the "appendix" were specifically overruled by the trial court.[7] More significantly, twenty-seven of those instances cited in Scientology's "appendix" took place during the examination of Yanny, when he was on the stand. He had been specifically excluded by the trial court from participating in side bar conferences. Yanny had no way of knowing the substance of the trial court's decision at side-bar during his examination and the limits it might have imposed on his testimony.

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[6] The following is a partial list: Reporters Transcript: 362-63, 365, 382-83, 589-90, 1123, 1125, 1202, 1223, 1319-20, 1725-26, 1795-96, 1931, 2008-09, 2105-06, 2107-08, 2246-47, 2257, 2484, 2568-69, 2707, 2856, 2861-62, 2929, 2931-32, 2969-70, 273-74, 2976-77, 2981, 2996-97, 3006-07. These examples were taken from Scientology's "appendix."

[7] The following is a partial list: Reporters transcript: 436, 438-39, 591, 924-25, 967-68, 989, 1120-21, 1208, 1235-36, 1313-14, 1777-78, 1779-80, 1924-25, 1984-85, 2011-12, 2107, 2149-50, 2154-55, 2199-2201, 2993. These examples were taken from Scientology's "appendix" of purported misconduct.

When objections were sustained, during the over one-and-a-half month jury trial, the trial court followed, when necessary, with an admonition that sought to clarify that matters being discussed were allegations, rather than facts.

VII

A fair and dispassionate reading of the record does not support Scientology's charge. This was a hard fought lawsuit. Scientology at long last concedes the trial was "hotly contested". In this legal "hardball" Scientology gave a great many more causes to complain than did Yanny's counsel. The tone and flavor of Scientology counsel's conduct (Cooley) appears in the opening statement and continues into his final argument. In his opening statement Cooley represented he would prove:

> "Approximately 40 to 60 percent of the $2,300,000 represented fraudulent billing [by Yanny].
>
> "There are basically two parts to this case, the betraying of client confidences, the aiding, counseling and assisting of adversaries. That's one side. And the other, the fraudulent billing.
>
> "These three entities come before you not to present any form of ecclesiastical dispute, but they come before you as clients of a lawyer. They come before you presenting to

you a claim that their lawyer to whom they paid $2,300,000 has betrayed them and gouged them, and they ask you to focus your attention--

"MR. SAYERS: Your Honor, I'm going to object to this is argument and I'd ask that the jury be instructed to disregard these comments.

"THE COURT: I'll ask the jury to disregard it."

Cooley continued his not to be factually supported diatribe:

"The evidence will show that he has become the field general for the main litigation involving adversaries of the church, these three entities. . . ."

Counsel's statements of evidence to be offered should be presented in good faith. Many of Cooley's statements were totally unsupported by evidence produced at trial.

Scientology witnesses gratuitously volunteered unsupported statements of Yanny's marital infidelities.

"Q. Do you recall what Mr. Yanny said with respect to Ms. Aznaran's relationship to that retainer?

"A. He said he owed everything to Vicki Aznaran, and that if it weren't for Scientology ethics he would like to sleep with her.

"MR. SAYERS: Objection. Move to strike. That's irrelevant and highly prejudicial.

"THE COURT: Overruled. Motion to strike denied.

[SCIENTOLOGY ATTORNEY]: This is a further example.

"MR. DRESCHER: Your Honor, I'd object to Mr. Yanny's gratuitous remark and ask that it be stricken.

"THE COURT: Overruled. The jury is asked to disregard any comment made by the lawyer.

"THE WITNESS: I don't think it's proper to sleep with a law clerk in your office a month after you've married your wife and she's working in the office." (Emphasis mine.)

These gratuitous, irrelevant factually unsupported statements continued into the final argument [by Cooley] when he said:

"Good morning. [¶] Mr. Van Sickle's final argument was based, I think, upon a technique more appropriate to a propaganda ministry than to a courtroom. His strategy obviously was to equate things that, in fact, are irrelevant to each other, and then to lump the entire story into a great big generality which he gave his own theological spin by repeating to you over and over again.

"So what. So What. Big deal. Word games.

"So what that Yanny ripped plaintiffs off for thousands upon thousands of dollars. Nobody's perfect.

"So what that neither of the defendants' only two witnesses, Yanny and Vicki Aznaran, could get their story straight, even when they spent the night together before one of them testified.

"So what that the fictitious documents that Yanny claims support his position never even existed.

"So what that Yanny dreamed up a nonexistent agreement, one-page agreement written by a dead man which Mr. Van Sickle now wants you to ignore.

"So what that Yanny claims to have cut the deal for the $150,000 retainer at a meeting that never happened in a restaurant Vicki Aznaran never visited with people who were never there.

"The so what is that a witness, and particularly a lawyer, who is supposed to honor and serve the judicial process, has a sacred duty not to give false testimony and not to procure false testimony from that witness stand, and to treat his clients with honesty and fairness and not to take advantage of their trust in him by defrauding them.

"As part of his effort to reduce Yanny's enormous wrongdoing to a so what or big deal status, Mr. Van Sickle characterizes specific items that have been proven as part of the overall fraud, which even by his calculations come to $50,000, that's pocket change, and nickels and dimes not worthy of your consideration.

"Mr. Van Sickle, thus announces a new rule; the law according to Yanny. It's okay to steal $50,000 because it's not really a lot of money to these plaintiffs. I say to you, it is a lot of money. Furthermore, it's solid

> evidence of the overall fraud that Yanny had in his heart and it defines what Yanny is, and serves as one of the many building blocks on which we ask you to base the overall case of fraud, treachery and deceit.
>
> "According to Mr. Van Sickle, all of the witnesses against Yanny are blind and cannot see the elephant. Jacobs is blind, Grabowski is blind, Todd Serota's blind, Warren McShane, Paul Schroer, Doreen Hackett, Eva Raber, Tom Vallier, Marty Rathbun and Dorothy Peti, all blind. None of them can see the elephants, according to Mr. Van Sickle. They feel the tail and think it's a rope and want to hang Yanny with it.
>
> "I would suggest to you that there are so many people who have testified here to fundamentally the same thing that they have correctly identified not only the tail but the trunk, tusk, head, ears, body, and that the elephant has taken shape, and has trampled Yanny's thick of lies."

Neither the judge nor the jury accepted these statements as fact as demonstrated by the jury verdict in favor of Yanny and the court's decision denying injunctive relief to Scientology.

In many instances, Scientology induced the commission of the conduct now claimed to be Yanny's misconduct. In such case Scientology is estopped from asserting any induced, alleged, misconduct as a ground for reversal. (9 B.E. Witkin, California Procedure: Appeal § 301 et seq. [3d Ed., 1985, Supp. 1992].) One of the major

issues of purported misconduct cited by Scientology, was Yanny's reference to the Wollersheim verdict. This verdict was in evidence, having been introduced by Scientology itself as Exhibit 61. This is invited error or waiver. (Gunch v. Fieg (1913) 164 Cal. 429, 333.)

Finally, regardless of whether the trial court overruled or sustained the objections, over seventy instances of purported misconduct cited by Scientology are based on objections where there is no certification of the grounds for objecting whether as to the form or the substance of the question. These various examples cited by Scientology, do not meet the standard to constitute lawyer misconduct. There is no basis for reversal shown in this record.

VIII

Scientology next contends the trial court's failure to instruct the jury as to willful suppression of evidence is reversible error. Two issues are raised. Was the refusal erroneous and if error, prejudicial? Scientology has the burden of proof on both issues. (Null v. City of Los Angeles (1988) 206 Cal.App.3d 1528, 1532.) The court in place of the requested instruction gave a broader alternate instruction as follows:

"If weaker or less satisfactory evidence is offered by a party when it was within his power to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust.

"In determining what inferences to draw from the evidence, you may consider, among other things, a party's failure to explain or to deny such evidence."

A litigant is entitled to instructions on every theory advanced by him which finds support in the evidence. (Phillips v. G. L. Truman Excavation Co. (1961) 55 cal.2d 801, 806; Daniels v. City of County of San Francisco (1953) 40 Cal.2d 614, 623.) But the precise instruction requested is not required in every instance. The instruction actually given had not only covered Scientology's theory of willful suppression but also covered other theories favorable to Scientology. Scientology's theory was adequately covered by the instruction given. (See Williams v. Carl Karcher Enterprises Inc. (1986) 182 Cal.App.3d 479, 487.) If it be assumed that the broader instruction given was not sufficient yet no prejudice is shown. The evidence was in conflict as to what was contained in the non produced documents. The jury chose to believe Yanny's witnesses. There was no evidence of Yanny's willful suppression of any documents.

IX

Scientology contends that the jury verdict on the cross-complaint is not supported by substantial evidence. Scientology's quarrel is with the substantial evidence rule:

> "It is fundamental that the trial court's [or jury's] factual findings will be reversed on appeal only when they are not supported by substantial evidence. (In re Marriage of Mix (1975) 14 Cal.3d 604, 614; Stevens v. Parke, Davis & Co (1975) 9 Cal.3d 51, 64.) In applying the substantial evidence test, the court views the evidence in the light most favorable to respondent (Nestle v. City of Santa Monica (1972) 6 Cal.3d 920), accepting as true respondent's evidence resolving all conflicts in respondent's favor, and drawing such favorable inferences as may be drawn from the evidence. (Hasson v. Ford Motor Co. (1977) 19 Cal.3d 530, 544.)"

We may quickly dispose of Scientology's claims that the evidence was insufficient to support the judgment. We do not reweigh the evidence on appeal, but rather determine after resolving all conflicts favorable to the prevailing party whether there is substantial evidence.

We find here there is substantial believable evidence of Yanny's contract to perform legal services for Scientology and there is evidence of his performance of the contract and Scientology's breach. Scientology refused to pay for services rendered to Yanny's damages. Yanny was

hired by RTC president Vicki Aznaras. He was retained at a non-refundable $150,000 retainer. The contract was admitted. The Scientology's witness McShane admits the final bill submitted by Yanny was unpaid. The services rendered by Yanny were complex and extensive in nature. It was only after Yanny expressed his disagreement with certain Scientology practices and policies did Scientology question any bills submitted. There is more than substantial evidence to support the jury verdict and the trial court's denial of injunctive relief. Each must be affirmed.

X

DISPOSITION IN RE SANCTIONS

This is a case that warrants the imposition of sanctions upon Scientology under Code of Civil Procedure section 907 as well as upon Scientology's attorney William T. Drescher and Eric M. Lieberman. Respondents Mary Grieco and Richard Wynne have been sued without cause, put to the expense of a three month trial and to this lengthy appeal. On this appeal Scientology does not even mention Mary Grieco. Richard Wynne is mentioned only once in a footnote in an unrelated matter.

After 41 days of trial--three months out of the life of Yanny, Grieco, Wynne and McRae, Scientology

produced an enormous amount of time consuming legal froth--no substance, no lawful basis, for any relief. Scientology witnesses swore under penalty of perjury to "facts" that formed the basis of the issuance of the temporary restraining order here in the injunction. When tested in open court these witnesses were found not worthy of belief. There is a strong suspicion that one of these witnesses, Dorothy Cole, was a plant, a spy placed by Scientology in Yanny's employ. The declarations under oath by Yanny, Grieco and Wynne support the conclusion that a series of illegal pressures were sought to be placed on these parties; that an attempt at subordination of perjury was made. A review of this record as a whole leads to this conclusion. This appeal court and the trial court below was used as a means in Scientology's pursuit of the "fair game," policy of punishing those who leave Scientology without Scientology's approval. This appears to be a continuation of the fair games procedure of Scientology to discredit and to destroy and ruin an adversary by whatever means available. (See Church of Scientology v. Armstrong (1991) 232 Cal.App.3d 1060, 1067; Wollershein v. Church of Scientology of Calif., supra, 212 Cal.App.3d 872, 888, 891-895; Allard v. Church of Scientology of Calif. (1976)

58 Cal.App.3d 439, 444.)

The prime issue in this trial was credibility. Scientology witnesses totally failed to establish the requisite facts necessary to judgments in their favor. The evidence of the "fair game policy" and its application was relevant.

Scientology failed to adequately designate the record on appeal (Cal. Rules of Court, § 5.1). Scientology does not give this court the necessary record in order to determine their contentions of error in the jury verdict. This neglect prevents this court to reach the merits of the issues raised.

Neither Scientology nor its lawyers offer any justification for the prosecution of this appeal against Mary A. Greco or Richard Wynne. There is no legal or factual basis to find any error in the judgments in favor of these individuals.

Scientology at long last concedes (as is apparent from the face of the record) that the trial was "hotly contested." The record and the jury verdict and court decision reflect a rejection of the unsupported slanderous statements and legal deficiencies of Scientology's positions taken.

Scientology and counsel have failed to respond to or refute misleading arguments made on this appeal. (See fns. 7 and 8, supra.) The same issues and arguments presented on this appeal were made--unsuccessfully--before Division Three of this court in case No. B068216 (see fn. 3, supra).

Scientology and counsel have urged on this appellate court law having no relevancy whatsoever. This case does not involve a lawyer representation of a client against a former client after termination of that attorney client relationship. Further, the law relevant to a "breach of loyalty" absent facts to show a disclosure of confidence has no application whatsoever. Three times Scientology and its lawyers have pushed these inapposite legal arguments without success. The high point in evidence offered was rejected by the trial court as not worthy of belief. This was an appeal on unproved--rejected as false--facts. This appeal and its delays and total lack of merit must be viewed in conjunction with the other groundless similar lawsuit pursued against Yanny. Such evidence leads to the conclusion that this proceeding was a device for destroying Yanny and any lawyers who chose to work with him. This appeal is the "Fair Game" of Scientology infamy at work.

This appeal has been delayed unreasonably due to Scientology's failure to perform requisite acts to perfect an appeal. There were violations of numerous rules of court. The notice of appeal was filed April 23, 1991 and designation of the reporters record made on May 9, 1991. It was not until September of 1992 that Scientology paid the estimated costs of completing the reporters transcript. Failure to do so for over one year caused this court to make its own motion to dismiss. Numerous other delaying tactics appear in this record.

XI

THE LAW IN RE SANCTIONS ON APPEAL

Code of Civil Procedure section 907 provides:

> "When it appears to the reviewing court that the appeal was frivolous or taken solely for delay, it may add to the costs on appeal such damages as may be just." (See also Rule 26(a).)

An appeal taken for an improper motive represents a time-consuming and disruptive use of the judicial process. Similarly, an appeal taken despite the fact that no reasonable attorney could have thought it meritorious ties up judicial resources and diverts attention from the burdensome volume of work at the appellate courts. An

appeal should be held to be frivolous only when, as here, it is prosecuted for an improper motive--to harass the respondent or delay the effect of an adverse judgment--or where it indisputably has no merit--when any reasonable attorney would agree that the appeal is totally and completely without merit. (In re Marriage of Flaherty (1982) 31 Cal.3d 637, 650.)

Pursuant to rule 26(a), this court may impose upon offending attorneys or parties such penalties "as the circumstances of the case and the discouragement of like conduct in the future may require." (Italics added.)

Preliminarily, I note that because of due process considerations, "Penalties for prosecuting frivolous appeals should not be imposed without giving fair warning, affording the attorney an opportunity to respond to the charge, and holding a hearing. Further, when imposing sanctions, the court should provide the attorney with a written statement of the reasons for the penalty." (In re Marriage of Flaherty, supra, 31 Cal.3d at p. 654.) These due process requirements have been more than met here.

It is pointed out in Bank of California v. Varikin, 216 Cal.App.3d 1630, 1636, respondents are:

". . . [N]ot the only parties damaged when an appellant pursues a frivolous claim. Other appellate parties, many of whom wait years for a resolution of bona fide disputes, are prejudiced by the useless diversion of this court's attention. (Martineau, Frivolous Appeals: The Uncertain Federal Response (1984) Duke L.J. 845, 848 & fn. 18.) In the same vein, the appellate system and the taxpayers of this state are damaged by what amounts to a waste of this court's time and resources. (See generally Bennett v. Unger (1969) 272 Cal.App.2d 202, 211; cf. Cann, Frivolous Lawsuits--The Lawyer's Duty to Say 'No' (1981) 52 U.Colo. L.Rev. 367, 368-369 [discussing the social cost of frivolous appeals].) Accordingly, an appropriate measure of sanctions should also compensate the government for its expense in processing, reviewing and deciding a frivolous appeal. (Bennett v. Unger, supra, 272 Cal.App.2d at p. 211; Eisenberg, [Sanctions on Appeal: A Survey and a Proposal for Computation Guidelines (1985)] 20 U.S.F. L.Rev. [13]; Young v. Rosanthal, 212 Cal.App.3d 96, 133.)"

In Young v. Rosenthal, supra, at page 134, the court held:

"In determining the appropriate relief, the underlying policy of Code of Civil Procedure section 907 should control. 'The object of imposing a penalty for frivolous appeal is twofold--to discourage the same, as well as to compensate to some extent for the loss which results from the delay. . . . [¶] In determining the amount . . . in this case for a frivolous appeal we should consider the facts with relation thereto and the effect of the delay.' (Huber v. Shedoudy (1919) 180 Cal. 311, 316-317; see also Kim v. Walker (1989) 208 Cal.3d 375, 384-385.)"

"In this case, such sanctions are most properly measured by the reasonable attorneys' fees incurred by CEH in responding to Rosenthal's appeals."

Review of the record and briefs filed including specific declarations as to time spent and applicable hourly rates, I conclude the amount of attorneys fees reasonably incurred in defense of this appeal by Yanny, Greco and Wynne, is the sum of $63,387.50 plus costs involved of $14,441.60 or a total of $77,829.10.

XII

SANCTIONS PAYABLE TO THE COURT

The handling of this case has imposed a lengthy and arduous burden upon the court. Numerous briefs, procedural motions precedes the oral argument in this case. I place the fault for imposing this burden on the legal system upon Scientology and counsel. This was a time-consuming, costly and frivolous appeal. The taxpayers of the state have been harmed by a wasteful diversion of their appellate court limited resources. The appropriate measure of sanctions should compensate the State of California for its processing, reviewing and deciding this frivolous appeal. This court is aware of the normal average cost of handling

an appeal in this Second District of the Court of Appeal (see Young v. Rosenthal, supra, 212 Cal.App.3d at pp. 136-137), but I am also painfully aware that that is not an average case.

I conclude the cost incurred by the State of California due to this frivolous appeal is the sum of $25,000. Appellant Religious Technology Center, a California non-profit religious corporation; Church of Scientology International, a California non-profit religious corporation; and Church of Scientology of California, A California non-profit religious corporation and their attorneys William T. Drescher and Eric M. Lieberman are jointly and severally liable to Joseph A. Yanny and Mary A. Greco and Richard Wynne for the total sum of $77,829.10.

Appellants and named attorneys should be directed to pay the further sum, as a joint and several obligation, of $25,000 to the clerk of the court as a further sanction.

The judgment is affirmed in all respects. Costs on appeal are awarded to respondents.

NOT TO BE PUBLISHED.

700783

STANIFORTH, J.*

*Assigned by the Chairperson of the Judicial Council.

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to respondents.

NOT TO BE PUBLISHED.

LILLIE, P.J.

I concur:

JOHNSON, J.

700785

EXHIBIT G

HUBBARD COMMUNICATIONS OFFICE
Saint Hill Manor, East Grinstead, Sussex

OT VIII

HCO BULLETIN OF 1 OCTOBER 1969

SECRET

WHY THETANS MOCK UP

This question has been the most plaguing one in Dianetics and Scientology.

The ONLY way a thetan ever gets in trouble, the ONLY way he can get trapped or become part of a cluster is by mocking up and making pictures of bad experiences.

And why record all bad experiences? This too is not good sense.

One can explain it by a yearning for event, by havingness and other ways but these do not factually lead to a total solution.

The real reason stems from a characteristic of a thetan. He never totally gives up.

There is, seemingly, a streak of resistance or resentment that makes a thetan wish to persist in the same place. If he cannot, he will do so covertly.

All power comes from the ability to occupy a point. The base that separates two terminals must be firm or there will be no exchange of energy.

The effort to weaken a thetan is to make him relinquish his point in space. Covertly or overtly a thetan seeks to assert his position in space.

If he cannot do so overtly, he does so covertly.

When a thetan is moved unwillingly from a point or position he even then refuses to give up that point but MOCKS IT UP. He also mocks up the events of his departure as a part of the action of mocking up the point he is leaving. This, unwittingly, gives him a picture, an engram.

Now let us see if this theory holds true in practice.

A. Just ahead of any engram there must be an effort to retain a position and there must be a point or location being mocked up.

This is true. You can blow an engram without running it by spotting its first point in space and time. In a secondary, "where did you first hear of the loss" is a vital question.

B. In a contact assist getting a person to touch again the point where he was hurt with what was hurt will blow the engram.

C. Getting a person to locate areas (locations) that are not safe produces blows of engrams without running them.

D. Exact and accurate dating sometimes blows an engram. Those times when it does not it should blow when the location is exactly spotted.

E. Implants and traps were done mainly to keep thetans out of an area. The thetan, resenting and resisting mocks up the place anyway and so implants himself.

A thetan too easily substitutes a mock up for a point in the real universe.

One could also say that a thetan, by mocking up, warns himself against certain points in space or areas in the physical universe.

Anxiety is solely not being able to be certain places and not where one is either.

Making people leave is the most unpopular action unless one also frees them to be anywhere.

Transfering people is a degrading thing to do to them.

Jail denies a thetan all spaces except where he has been placed and note that thetans are made very miserable in jail. Jailing is a sure way to confirm criminals and also to make them crazy as well.

Any thetan, stuck in an engram, is asserting the effort to be at the point where he was hit at the beginning of that engram.

An engram therefore is a refusal to leave a place at which force was exerted to drive one away.

Reversely, one can refuse to be held at a place where one does not wish to be but this is a negation of a place, a not-is of it and its time.

Power of choice over where one is and where one is not is thus a key to engrams.

Finally - a thetan mocks up because he covertly refuses to abandon a location under duress and not-ises the place where he does not wish to be but must.

Using these facts one can blow engrams without running them.

Some sample questions:

What point (location) is unsafe?

What location could you have held absolutely?

Where did you first get an intimation of danger?

What place would you rather not be in?

What effort would it take to hold (that) (a) location?

Working with this you will see a door open to a higher level than Dianetic R3R. But realize that it is only for a high level thetan.

This is the road to returned personal power in the physical unverse.

L. RON HUBBARD
FOUNDER

LRF:rs

700788

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EXHIBIT H

DECLARATION OF HON. JAMES M. IDEMAN

I, James M. Ideman, declare as follows:

1. Portions of this petition will become moot because I have decided to recuse myself from this case. Plaintiff has recently begun to harass my former law clerk who assisted me on this case, even though she now lives in another city and has other legal employment. This action, in combination with other misconduct by counsel over the years has caused me to reassess my state of mind with respect to the propriety of my continuing to preside over the matter. I have concluded that I should not. I have delayed the effective date of my recusal, however, so that I could respond on behalf of my court to the allegations in the petition.

2. I should say at the outset that this case should soon be concluded in the District Court and thus available for appellate review. I am confident that such a review will reveal that the plaintiff's claims raised in this petition are groundless. I would strongly recommend that any definitive appellate action be deferred pending a thorough review on appeal and that years of work not be wiped out by granting petitioner's extraordinary writ.

700790

3. The past 8 years have consisted mainly of a prolonged, and ultimately unsuccessful, attempt to persuade or compel the plaintiff to comply with lawful discovery. These efforts have been fiercely resisted by plaintiffs. They have

utilized every device that we on the District Court have ever heard of to avoid such compliance, and some that are new to us.

4. This noncompliance has consisted of evasions, misrepresentations, broken promises and lies, but ultimately with refusal. As part of this scheme to not comply, the plaintiffs have undertaken a massive campaign of filing every conceivable motion (and some inconceivable) to disguise the true issue in these pretrial proceedings. Apparently viewing litigation as war, plaintiffs by this tactic have had the effect of massively increasing the costs to the other parties, and, for a while, to the Court. The appointment of the Special Master 4 years ago has considerably relieved the burden to this Court. The scope of plaintiff's efforts have to be seen to be believed. (See, Exhibit "A", photo of clerk with filings, and Exhibit "B", copy of clerk's docket with *81* pages and *1,737* filings.)

5. Yet, it is almost all puffery -- motions without merit or substance. Notwithstanding this, I have carefully monitored the Special Master's handling of these motions. I saw no need to try to improve on the Special Master's writings if I agreed with the reasons and the results. However, with respect to the major ruling that I have made during these proceedings, the dismissal of the plaintiff's claims, the following occurred:

700791

6. The Special Master, after years of efforts to compel compliance with discovery, purported to order a dismissal of plaintiff's claims. Although the action was probably long overdue, the Special Master did not have the authority to make such a dispositive order. In reviewing his order, as I did with all of his actions, I saw what he had done and did not approve it. I treated the Special Master's "order" as a recommendation and gave notice to the parties that they could have a hearing and invited briefs. Only after considering fully the briefs of the parties did I give approval to the dismissal. It is true that I adopted the language chosen by the Special Master, but that was because I fully agreed with his reasoning and saw no need to write further.

7. Plaintiffs are unhappy with Judge Kolts and me for insisting that they comply fully with discovery or forfeit their case. For this reason they wish to have our work set aside and begin anew with another judge who may, they hope, permit them to litigate their claims without complying with discovery, or, perhaps, to further punish the other parties with more years of expensive litigation. This they should not be permitted to do, especially by means of the limited review possible on an extraordinary writ.

8. I respectfully recommend that the petitioner's claims that are not mooted by my withdrawal from the case be denied without prejudice to review of same upon appeal.

700792

I declare under penalty of perjury that the foregoing is true and correct. Executed this 17th day of June, 1993 at Los Angeles, California.

James M. Ideman
United States District Judge

700793

700794

Exhibit "A"

Exhibit H

Ford Greene thought he knew all about hardball litigation. Then he sued the Church of Scientology.

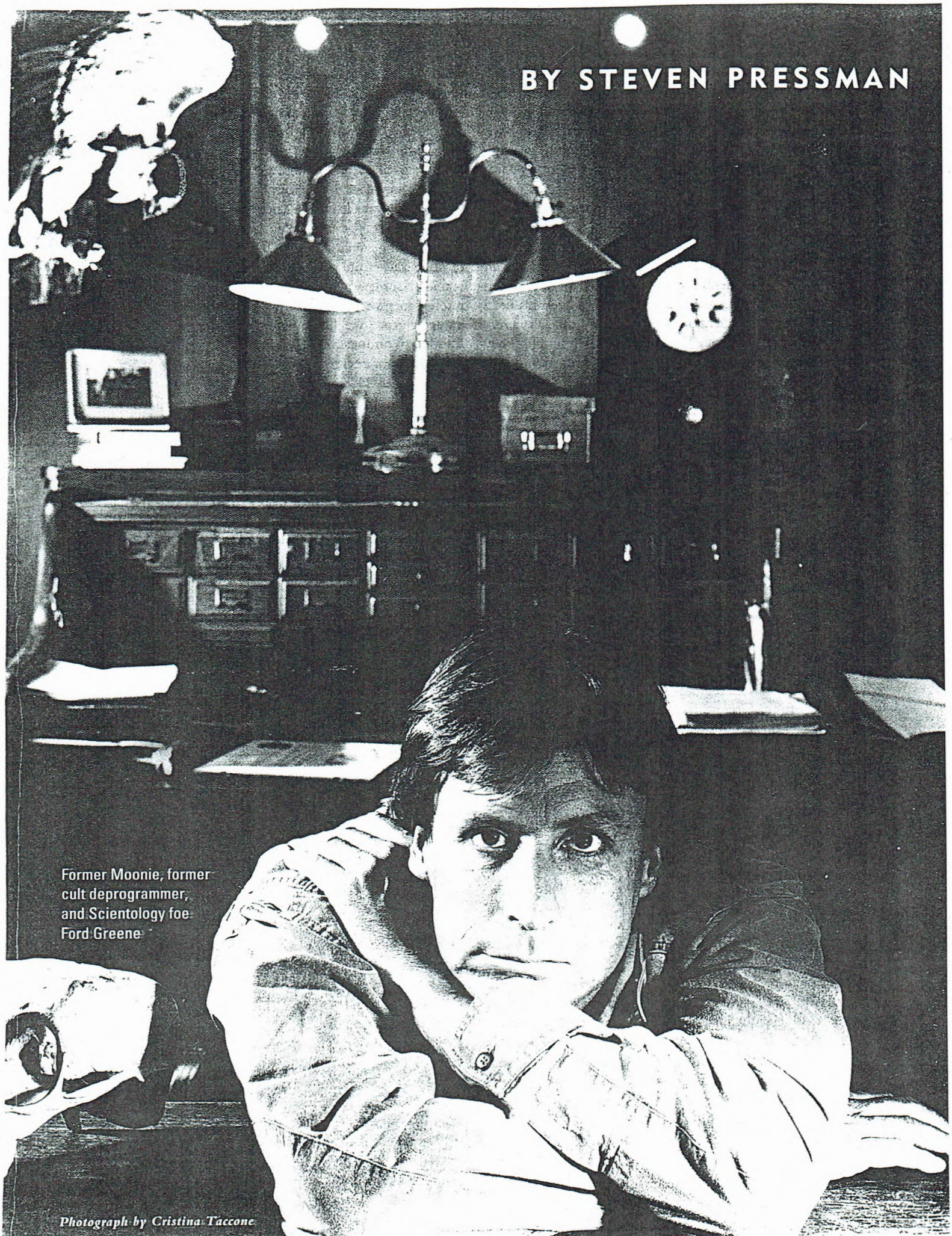
LITIGATION NOIR

It was a strange way to describe an aspect of a theology. But L. Ron Hubbard, the highly successful science-fiction writer who founded the Church of Scientology in the 1950s, had little tolerance for those who challenged his beliefs. And so it was, at one time, that Scientology scripture came to include an unusual litigation clause:

"The only way to defend anything is to attack, and if you ever forget that, then you will lose every battle you are ever engaged in, whether it is in terms of personal conversation, public debate or a court of law.... The law can be used very easily to harass, and enough harassment on somebody who is simply on the thin edge anyway ... will generally be sufficient to cause his professional decease. If possible, of course, ruin him utterly. If you ever forget that then you will lose every battle you are ever engaged in."

In the Scientology belief system, humans have immortal souls, or "thetans." The group's practices center on methods to clean the thetan mind and body by eliminating "engrams"—painful or traumatic episodes that are implanted in humans even before their births. Despite Hubbard's death in 1986, Scientology has thrived and has attracted such well-known followers as Tom Cruise, John Travolta, and Nancy Cartwright, the voice of cartoon superstar Bart Simpson. Critics, however, say Scientology is simply a cult and ersatz religion, whose primary purpose is to make money.

BY STEVEN PRESSMAN



Former Moonie, former cult deprogrammer, and Scientology foe Ford Greene

Photograph by Cristina Taccone

They point out that Hubbard's edict regarding detractors seems to be carried out routinely. Scientology litigation is, in fact, conducted well beyond the hardball tactics that have come to define modern legal warfare. "The church uses litigation as a weapon," says Jerold Fagelbaum, a Century City attorney who has faced the Church of Scientology in court. "They target the judges and the litigants. And they target the attorneys representing the litigants."

No one has been more of a target than Marin County lawyer Ford Greene. For the past five years, Greene has been representing former Scientologists in assorted disputes with the church. Though Greene barely manages to keep his head above water as a sole practitioner, Scientology officials consider him part of a conspiracy aimed against the church. They have fought him by dredging up criminal records, filing State Bar complaints, conducting surveillance outside his law office, and hiring private investigators to dig up his past and report on his current activities. A former Scientology follower swore in a deposition that Scientology church officials once discussed a plan to tamper with Greene's car brakes. Scientology officials emphatically deny the claim, but Greene remains convinced that he's a marked man.

Ford Greene's father and grandfather were both partners at San Francisco's venerable McCutchen, Doyle, Brown & Enersen. But there's no clue to that legacy in Greene's current situation. At 42, Greene looks remarkably boyish, and his customary work attire is sweatpants and a T-shirt. His dusty office in San Anselmo looks like a storage room: casebooks and legal files piled everywhere, competing for available legroom. When his sole employee is out of the office, Greene is left to answer phones, make photocopies, and keep the coffee going.

Greene earns a living by handling personal-injury and criminal-defense cases. But he prefers litigating against cults—Scientology, the Unification Church, and a handful of smaller organizations. One of his file cabinet drawers is even filled with a pile of "cultbuster" T-shirts he designed himself.

Greene knows firsthand about cults. In the early 1970s, he fell under the spell of the Reverend Sun Myung Moon's Unification Church, after trying unsuccessfully to pry his younger sister away from the group. Although she is still with the sect, Greene left after about a year to embark on a career as an anti-cult deprogrammer. A botched attempt to force a young man away from Moon's group in Colorado led to Greene's arrest on felony kidnapping charges, which were later dismissed.

By the late '70s, Greene decided he could better attack cults as an attorney. He obtained a law degree from San Francisco's New College of Law and was admitted to the bar in 1982.

"Ford has had a violent hatred for what cults have done to him and his family," says Carl Shapiro, a Marin County attorney with whom Greene apprenticed during and immediately after law school. While working with Shapiro, Greene became involved in a case that led to a landmark ruling broadening the right to sue religious groups. In 1979, two former Moon followers who claimed they had been coerced and brainwashed sued the Unification Church. Lower-court rulings said constitutional guarantees of religious freedom barred such suits.

Greene prevailed in the state Supreme Court. In an opinion written by Justice Stanley Mosk in 1988, the court said that imposing liability on the church for deceptive recruitment practices did create a marginal burden on the free exercise of religion. But it was a burden "justified by the compelling state interest in protecting individuals and families from the substantial threat to public safety, peace and order posed by the fraudulent induction of unconsenting individuals into an atmosphere of coercive persuasion." *Molko v Holy Spirit Ass'n,* 46 C3d 1092, 1117.

A few months later Greene agreed to represent Vicki and Richard Aznaran, two formerly high-level Scientologists who had left the church in 1987. Seeking $10 million in damages, the Aznarans filed a lawsuit in federal court in Los Angeles accusing the group of fraud, false imprisonment, infliction of emotional distress, conspiracy, and invasion of privacy. *Aznaran v Church of Scientology,* No. CV-88-1786-JMI. *Aznaran* became the first big Scientology case that Greene accepted. Since then, he has had only a handful of Scientology cases, but they are enough to thoroughly acquaint Greene with the Scientology "fair-game" policy.

In the 1960s, Hubbard came up with an edict holding that anyone interfering with Scientology was "fair game" and, hence, could be "deprived of property or injured by any means by any Scientologist without any discipline of the Scientologist." In addition, Hubbard wrote, fair-game targets could be "tricked, sued, lied to or destroyed."

Scientology officials now insist that Hubbard withdrew the edict a few years later because it had been misinterpreted. What Hubbard meant, they say, was that Scientology would not protect ex-followers from outsiders who tried to trick or destroy them after they had left the church.

Senior Scientology executive Kurt Weiland asserts, "There is no way we tolerate improper conduct. We don't react kindly to attempts to extort money from the church, especially if it's done through lies and allegations without substance by people like Ford Greene." From the group's international headquarters in Los Angeles, Weiland heads Scientology's Office of Special Affairs, which oversees the church's legal operations and security.

Weiland's unit used to be called the Guardian Office, which ran a massive operation during the 1970s aimed at stealing documents from federal agencies that were looking into suspect Scientology activities. Ultimately, 11 Scientology officials, including Hubbard's wife, served prison terms for their role in the operation.

Weiland says Scientology cleaned house several years ago, firing hundreds of employees who were involved in the church's questionable activities. Today, Weiland's office works

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Steven Pressman, a former editor at CALIFORNIA LAWYER, *is the author of* Outrageous Betrayal: The Dark Journey of Werner Erhard from est to Exile.

"You find out that [Greene's] got a criminal record.... It helps to explain the motivation of [his] outrageous falsehoods."

—SCIENTOLOGY LAWYER KENDRICK MOXON

closely with Bowles & Moxon, a Los Angeles law firm located inside one of Scientology's buildings on Sunset Boulevard. Although partner Kendrick Moxon worked as a paralegal in the Guardian Office in the 1970s, he denies having known about the illegal activities that were going on around him.

Over the years, Scientology has gained a reputation for relentless litigation, a characteristic criticized by judges. In 1989, a state Court of Appeal justice wrote that Scientology leaders made a "deliberate decision to ruin" financially, and possibly psychologically, a disaffected member who sued Scientology. *Wollersheim v Church of Scientology*, 212 CA3d 872. Five years earlier, Los Angeles Superior Court Judge Paul Breckinridge Jr. said that Scientology, "[i]n addition to violating and abusing its own members' civil rights, the organization over the years, with its 'fair game' doctrine, has harassed and abused those persons not in the church whom it perceives as enemies."

In Washington, D.C., in 1980, U.S. District Judge Charles Richey—who was hearing the criminal-conspiracy trial that grew out of the Scientology plot to infiltrate government agencies—accused church lawyers of a "groundless and relentless" campaign to have him recused. According to a 1980 article in *American Lawyer*, a Scientology-hired investigator leaked an allegation that Judge Richey had paid for a prostitute while staying at a Los Angeles motel. The pressures of the case eventually prompted Richey to step down.

More recently, U.S. District Judge James Ideman in Los Angeles removed himself from a long-standing case in which Scientology was suing a former member. Ideman said he was stepping down because of his "state of mind" after years of "misconduct" by Scientology counsel and because a former law clerk was being harassed by the church. In a June 1993 declaration, Ideman claimed the church had tried to evade discovery for eight years, and he accused its lawyers of "misrepresentations, broken promises and lies, but ultimately with refusal."

Moxon denies the misconduct and any harassment, saying he tried to subpoena the clerk as part of an effort to demonstrate Ideman's bias in the case.

SUSAN MUNIAK

A call to Weiland's office is all it takes to receive a dossier on Ford Greene. The packet contains little about his dealings with Scientology, but it includes materials related to two charges of battery against Greene. One is a criminal complaint for battery of a police officer in 1976. According to court documents, Greene pleaded no contest to a reduced misdemeanor charge of resisting arrest and received a sentence to community service. Greene says the arrest resulted from an overzealous reaction to being stopped for speeding.

The dossier also contains a police citation for alleged misdemeanor battery against a man standing outside a rally for the Reverend Moon at the Oakland Convention Center last year. The man told police he wanted to press charges after Greene hit him in the chest with an envelope. Greene says he was at the convention center to serve papers in a suit against Moon and tapped the man with the envelope after recognizing him. No charges were brought against Greene, a fact not mentioned in the Scientology packet.

Why has Scientology gathered such information about Ford Greene? Moxon says the Greene file is the result of a "simple, standard check" that any responsible lawyer would conduct. "You find out the guy's got a criminal record. He is a criminal," Moxon says of Greene. "It helps to explain what's going on. It helps to explain the motivation of these outrageous falsehoods that he's given to the court."

Weiland's reasoning for burrowing into Greene's past echoes something L. Ron Hubbard wrote in 1967: "We do not find critics of Scientology who do not have criminal pasts. Over and over we prove this."

"People who try to extort the church, whether they're lawyers or anybody else," Weiland says in measured tones, "usually have hidden or stored away some kind of criminality. And that sort of compels them to act the way they do."

Ford Greene believes he became a fair-game target of Scientology soon after he began representing the Aznarans. For evidence, he points to a former Scientologist, Gary Scarff, whom he met in the fall of 1987. Scarff said he befriended Greene as part of a Scientology directive to "exercise an operation" against him. In a letter sent last year to a lawyer representing Greene before the State Bar, Scarff said he infiltrated Greene's office and looked through "confidential legal records, legal files of his clients, [and] a [R]olodex of his contacts...."

In a 1992 deposition taken in a Scientology lawsuit against two former Scientologists—a suit Greene isn't involved in—Scarff said he began the friendship after posing as a member of the Chicago-based Cult Awareness Network, a nationwide confederation of local anti-cult groups. Scarff claimed Scientology lawyers and others directed him to produce an affidavit aimed in part at smearing Greene's reputation. In his declaration, Scarff alleged Greene grew and smoked marijuana.

Scarff swore that more extreme measures were also discussed during a meeting with Scientology officials. Among the matters allegedly discussed was the possibility of having Greene arrested on drug charges, spreading false rumors that he had AIDS, or tampering with the brakes on his car. Scientology officials vehemently reject Scarff's allegations. "I'm not even going to talk about it," says Weiland. "There's not a scrap of evidence to support anything he says." Moxon says flatly that such a meeting never took place: "It's an outright, vicious lie. It's just outrageous."

Another former Scientologist filed an affidavit accusing Greene of making improper sexual advances while representing her in a Florida case against Scientology. Greene accuses church officials of duping the woman—whom he says was suffering from mental problems—into making the accusations. Scientology lawyers deny the charge.

In 1991, Greene began to represent Gerald Armstrong, another former high-level Scientologist. A wiry man with a mane of brown hair often tied back in a foot-long ponytail, Armstrong eventually became Greene's only employee, doing everything from coffee making to paralegal work. Armstrong has been locked in litigation with Scientology almost from the day he left in the early 1980s. In 1986, he received an $800,000 settlement in exchange for not speaking publicly about the church or helping others bring lawsuits against it. Armstrong insists the settlement provisions are unlawful and has been challenging them in court with Greene's help.

Not long after Greene began representing Armstrong, two investigators hired by Bowles & Moxon staked out his office by parking across the street and training their video cameras on his front door. The purpose of the stakeout was to show that Armstrong was linked to Greene and thus engaged in anti-Scientology activities, which would have violated both his settlement agreement and an injunction. The investigation reveals something of Scientology's litigation overkill—Armstrong made no secret of his association with Greene.

In 1991, Eugene Ingram, a former L.A. police sergeant who now acts as Scientology's lead private investigator, wrote to the State Bar accusing Greene of committing perjury in declarations filed in two court cases. Ingram claimed that Greene's declarations falsely led the courts to believe he had been incapacitated by a back injury at a time the lawyer was making speaking appearances and engaging in other activities. Ingram's complaint also noted that Greene may have been improperly practicing law as "Ford Greene" since his legal name is Aylsworth Crawford Greene III.

The State Bar eventually gave Greene a private reproval for the declarations, which Moxon says is evidence that Greene has been "sanctioned and punished" by the bar.

According to Greene, Scientology investigators failed to convince the district attorney's office and U.S. attorney's office in Los Angeles to bring perjury charges against Greene because of the back-injury declarations.

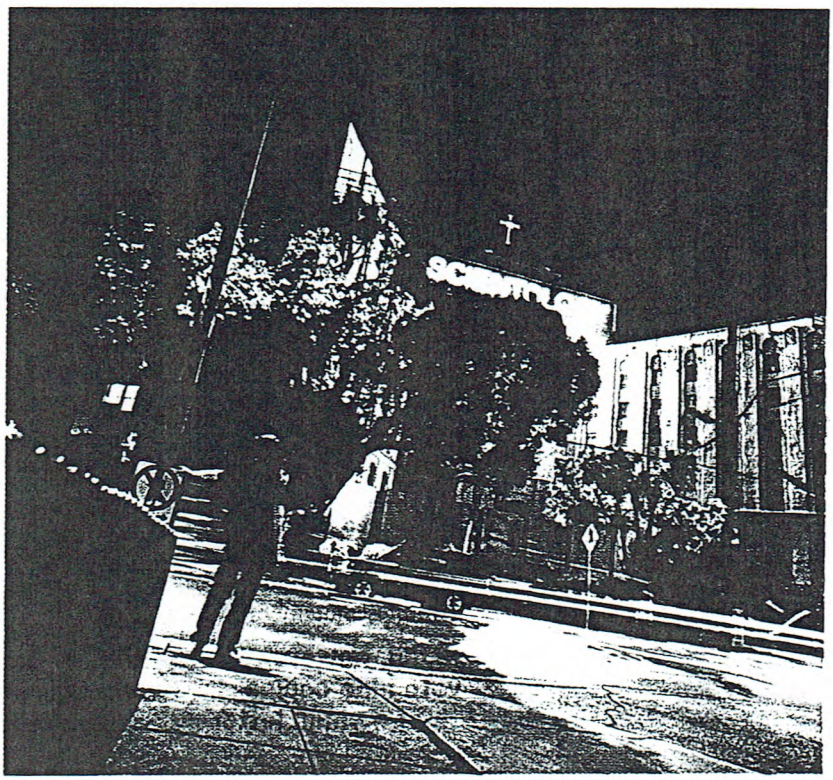
Greene says Scientology investigators also contacted his friends and associates. In a report to Greene, one friend wrote that Ingram and another investigator, who said they were working for Bowles & Moxon, came to her Berkeley home in July 1992 to ask about Greene. When pressed, the investigators acknowledged their research would end up in Scientology's files. After the friend asked them to leave, Ingram told her he knew she was a graduate student. "He also knew my parents had me forcibly deprogrammed from the Sri Chinmoy cult," she said in the report to Greene, "that I was aligned with the Cult Awareness Network, that my mother ran the Cult Awareness hotline in Northern California, and that I was obviously sympathetic to the goals of the organization."

Scientology officials and outside counsel for the church deny that any of their actions amount to misconduct. San Francisco attorney Andrew Wilson—a partner in Wilson, Ryan & Campilongo who represents the church in a lawsuit against Greene's assistant, Armstrong—calls Greene "totally paranoid." Wilson explains that Scientology tactics are part of the group's "pretty aggressive" approach toward litigation. But he rails against Greene and other lawyers for trying to "poison" the courts against the group with "falsehoods and distortions" in court pleadings, declarations, and other documents.

Ford Greene's own litigation tactics can be inflammatory. Once, during a deposition in the *Aznaran* case, Greene showed up wearing one of his cultbuster T-shirts, which feature caricatures of Hubbard and Jonestown leader Reverend Jim Jones, among others. The shirt—as well as Greene's bracelet and pin bearing Scientology insignia—prompted the other

"There is no way we tolerate improper conduct. We don't react kindly to attempts to extort money from the church, especially if it's done through lies and allegations."

—KURT WEILAND, HEAD OF SCIENTOLOGY'S OFFICE OF SPECIAL AFFAIRS



Scientology headquarters in Los Angeles

lawyer to accuse him of "provocative and insulting conduct." Another time, when he was representing Armstrong, he suddenly interrupted a deposition with a series of martial arts movements. Greene makes no apologies for his unconventional behavior, saying anything he does pales in comparison to the brand of litigation practiced by Scientology's lawyers.

Greene claims that Scientology eventually pushed him out of the *Aznaran* case. According to the Aznarans, Greene's dismissal was a condition for a settlement offer made to the couple in June 1991. Newport Beach lawyer Barry Van Sickle, the Aznarans' original lawyer, relayed the offer to the couple.

Claiming to be acting on Van Sickle's advice, the Aznarans agreed to discharge Greene, until they discovered the offer was insufficient. In subsequent declarations, Van Sickle denied that Greene's discharge had been a condition of the offer. The Aznarans returned to Greene—who was joined by John Elstead, a sole practitioner in Pleasanton—and in August 1992, the case was transferred at Scientology's request from the federal court in Los Angeles to Dallas. Earlier this year, after agreeing to a confidential settlement, the Aznarans withdrew their allegations and asked the court to dismiss their suit. Greene and Elstead say they were never consulted, and they are now considering suing the Aznarans for breach of contract and filing a motion for sanctions against their Dallas lawyer.

Greene now has just two active Scientology cases. One client is Larry Wollersheim, who said he was psychologically and economically ruined by the Church of Scientology. He won a $30 million judgment that was reduced to $2.5 million. The case has already been appealed twice to the U.S. Supreme Court and shows no signs of ending. The other client is his assistant, Gerald Armstrong. Greene is preparing an appeal of a Los Angeles Superior Court ruling that enjoined some of Armstrong's anti-Scientology efforts. Another Scientology suit, which claims Armstrong has fraudulently conveyed assets to a third party to insulate him from any adverse judgments, has a May 1995 trial date.

Yet another State Bar complaint against Greene has been filed by Scientology, this one alleging Greene had a conflict of interest in the *Aznaran* case. And Greene and Armstrong are convinced that their San Anselmo storefront continues to be watched regularly by Scientology operatives.

"I consider all this crap to be an occupational hazard of anti-cult litigation," Greene says. "And I'm getting fed up. I'm getting tired of dealing with all those lying Scientology lawyers and private investigators." For a brief moment, Greene seems weary, defeated. But the moment passes, and the gleam quickly returns to his eye. "There's going to be some more R&D in the cultbusting department. And I'm not going to go away." ❖

TOM KELLER

Exhibit I

The New York Times

FRIDAY, OCTOBER 22, 1993

Scientologists Report Assets of $400 Million

By ROBERT D. HERSHEY Jr.
Special to The New York Times

WASHINGTON, Oct. 21 — The Church of Scientology, the secretive and combative international organization that recently won a decades-long drive for Federal tax exemption, counts assets of about $400 million and appears to take in nearly $300 million a year from counseling fees, book sales, investments and other sources, according to documents filed with the Internal Revenue Service.

The financial disclosures are in documents the church was required to file with the I.R.S. in applying for tax-exempt status, conferred on 30 or more entities of the church early this month. The documents, 12 linear feet of them in eight cardboard boxes, formed the basis for the I.R.S.'s decision and became a matter of public record when tax exemption was granted.

A review of much of the material this week showed that while the group spends heavily on legal fees, advertising and commissions for fund-raisers — and is spending $114 million to preserve the writings and tapes of its deceased founder that it calls its scripture — its top officials are paid salaries comparable to those of the leaders of Protestant denominations.

Salary of Top Officials

David Miscavige, who holds the highest ecclesiastical position in Scientology, is listed as being paid $62,683 in 1991. His wife, Michele, was paid $31,359 as his assistant. Although the organization typically pays fund-raisers 10 percent of what they bring in, the Miscaviges did not supplement their pay with commissions, Mark C. Rathbun, president of a major church unit, said in a telephone interview today.

The salaries challenge former members of the group and other critics who assert that Scientology is a sham religion run more as a business for the financial benefit of senior members.

The 8.9-million member United Methodist Church pays its leadership up to $85,932, plus housing, Methodist officials say. Scientology officials say the church has eight million members, a figure that is disputed by many who have left the church and other critics. They say the church has no more than 700,000 members, and perhaps as few as 50,000.

The filings included three sets of church responses to follow-up queries by the I.R.S., dated April 1991, June 1992 and November 1992. Although the service would not elaborate on what might have tipped its decision to grant tax exemption, the provision of salary data in the final round may well have been a crucial factor.

When asked whether the I.R.S. verified salary or other figures, Frank Keith, a spokesman for the agency, would not comment directly. But he called the salary information provided by the church "sufficient" for determining that "there were no issues of inurement that could have prevented" approval of the exemption. Inurement, or private enrichment, is barred under the tax law governing religious and other charitable organizations.

What Religion Is Based On

The files, which include doctrinal material and training manuals as well as financial statements, do not make clear the amount of Scientology's annual income. Revenues compiled for 18 of the 30 entities, including all the major ones, total about $285 million. But Mr. Rathbun said the actual figure was "not anywhere near that." Mr. Rathbun said he could not provide an estimate of his own.

Mr. Rathbun said the figure appeared larger than it was because the church often transferred money among its units and treated maturing certificates of deposits as revenue.

Scientology is based on the research of L. Ron Hubbard, a onetime writer of science fiction who died in 1986. His 500,000 pages of writings and thousands of taped lectures are the sole source of doctrine.

Spiritual salvation, the church teaches, can be achieved only by following the scriptural precepts, including participating in sessions aimed at shedding painful experiences and to raise spiritual awareness. During these sessions, machines called E-meters, which resemble small lie-detectors, are used to measure responses to questions.

Big Pay for Fund-Raisers

Although leaders did not appear to make large salaries, some of them had relatives on the church payroll. For example, Mr. Miscavige's father, stepmother, brother and sister-in-law are all employed by the church. In addition, his mother and two sisters, while not employed by the church, earned commissions as fund-raisers.

The records showed a half-dozen or more people making hundreds of thou-

William E. Sauro/The New York Times

The Church of Scientology appears to take in nearly $300 million a year from counseling fees, book sales, investments and other sources, according to Internal Revenue Service documents. Visitors to a church center at 65 East 82d Street browsed through books in a reception area.

sands of dollars a year in fund-raising commissions.

The files showed one of the biggest fund-raisers was Barry Klein, who made $217,694 in 1989, $201,314 in 1990 and $176,582 in a third year that was not listed. Mr. Klein is listed as a field staff member and "disseminator." Field staff members are not considered church members and are paid commissions based on donations raised from parishioners. Disseminators, also not considered employees, raise money for the International Association of Scientologists, collecting 10 percent of the money they raise.

Two other big fund-raisers are Ken Pirak, who made $407,052 in 1991, and Steve Grant, who made $339,978 in 1991.

The filings also showed that Scientology units spent $30 million in legal bills during 1987 and 1988, $7 million on bomb-resistant doors for one of three vaults in which Mr. Hubbard's writings are to be stored and $6 million for an advertising campaign.

The church's 440-foot yacht, the Freewinds, is valued at $15.2 million. The yacht is kept in the Caribbean and is used for spiritual retreats by top church officials.

The documents also showed that the church owns more than $3.5 million in gold bullion.